

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION

United States of America,)	
)	
Plaintiff,)	
)	
vs.)	File No. 1:10-cr-041
)	Appeal No. 11-1462
Michael Howard Reed and)	Appeal No. 11-1463
Gregory Allen Davis,)	
)	
Defendants.)	

TRANSCRIPT OF JURY TRIAL
VOLUME I
Pages 1-189

Taken at
United States Courthouse
Bismarck, North Dakota
October 12, 2010

BEFORE THE HONORABLE CHARLES B. KORNMAN
-- UNITED STATES DISTRICT COURT SENIOR JUDGE --

APPEARANCES

MR. THOMAS J. WRIGHT
U.S. Attorney's Office
325 S. First Avenue, Suite 300
Sioux Falls, South Dakota 57104

FOR THE UNITED STATES

- - - - -

MR. JAMES D. HOVEY
Pearson Christensen & Clapp, PLLP
24 North Fourth Street
P.O. Box 5758
Grand Forks, North Dakota 58206-5758

STANDBY COUNSEL
FOR THE DEFENDANT
MICHAEL HOWARD REED

- - - - -

MR. JOEL L. LARSON
Camrud, Maddock, Olson & Larson, Ltd
P.O. Box 5849
Grand Forks, North Dakota 58206-5849

STANDBY COUNSEL
FOR THE DEFENDANT
GREGORY ALLEN DAVIS

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GOVERNMENT EXHIBITS

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1	Indictment in USA v Chavez, et al, filed 11/6/08	89	89
2	Docket Cover Sheet in USA v Allery	91	91
3	Telephone call from Mr. Reed to Judge Erickson	114	114
4	Cassette tape of telephone call from Mr. Reed to the FBI	126	126
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5	Indictment in USA v Michael Howard Reed, Case 4:09-cr-76, filed 9/24/09	146	146
6	Docket Cover Sheet, Case 4:09-cr-76	148	148
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9	UCC Financing Statement dated 1/6/10, Doc. No. 2010001134	162	162
10	VHS taped interview of Greg Davis dated January 20, 2010	178	178

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10a	DVD of interview of Greg Davis dated January 20, 2010	178	178
11	Notice of Default of Copyright and True Bill dated 4/29/10	184	186
12	Lodgement of Affidavit in Support for Notice for Default for Copyright and True Bill dated 4/30/10	184	186
13	Audio recording of jail call from Mr. Reed to Mr. Davis on 12/31/09	245	246
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1 (The above-entitled matter came before the Court, The
2 Honorable Charles B. Kornmann, United States District Court
3 Senior Judge, presiding, commencing at 9:27 a.m., Tuesday,
4 October 12, 2010, in the United States Courthouse, Bismarck,
5 North Dakota; with counsel appearing on behalf of the
6 respective parties as hereinbefore indicated:)

7 - - - - -

8 (The following proceedings were had and made of
9 record in open court with the defendants and counsel present,
10 out of the presence of the jury panel.)

09:27

11 THE COURT: Good morning to everyone. We have -- we
12 have convened for a trial in the case of *United States of*
13 *America versus Michael Howard Reed and Gregory Allen Davis*.
14 Both defendants are personally present with their standby
15 attorneys. And also, Mr. Wright, why don't you state your
16 appearance for the record, please.

09:27

17 MR. WRIGHT: Good morning, Your Honor. Tom Wright,
18 U.S. Attorney's Office, South Dakota, appearing for the U.S.
19 Attorney's Office of North Dakota.

09:27

20 THE COURT: And this is the case agent here?

21 MR. WRIGHT: Yes, Your Honor, Agent Kellerman with
22 the FBI.

23 THE COURT: All right. Thank you. Let's have the
24 standby counsel, if you would state your names for the record,
25 please.

09:27

1 MR. HOVEY: Good morning, Your Honor. James Hovey,
2 standby counsel for Mr. Reed.

3 MR. LARSON: Good morning, Your Honor. Joel Larson
4 as standby counsel for Greg Davis.

09:28

5 THE COURT: All right. Thank you. Now, let me ask
6 the defense, do you want the standby attorneys to sit back
7 there, or do you want them up on the bench here? They can
8 certainly sit right behind you.

9 MR. REED: It's --

09:28

10 THE COURT: State your name first please, sir.

11 MR. REED: My name is Boa-kaa-konan-na-ishkawaanden.
12 I am Michael Howard Reed. I am the -- Boa-kaa-konan-na-
13 ishkawaanden is the agent for Michael Howard Reed, Michael H.
14 Reed, 572-39-1433.

09:28

15 THE COURT: Do you want them up here in the bench
16 there behind or back where they are?

17 MR. REED: They instructed me earlier last week that
18 they would not want to be present in the well of the court, so
19 I'll respect their opinion.

09:28

20 THE COURT: Well, I think it's a lot easier if you
21 want to talk to them if you want them closer. Why don't you
22 gentlemen take a seat up there on that bench, please.

23 All right. Mr. Wright, you had filed a motion in
24 limine, and that's a standard motion that I've seen a hundred
25 times, I suppose. Do the defendants have any objections to

09:29

1 this motion in limine? It's Docket 75. I assume you've seen
2 that.

3 MR. REED: I've seen that, Your Honor, and I do have
4 some objections to it.

09:29

5 THE COURT: State those objections, please.

09:30

6 MR. REED: The specific objection is he's requesting
7 that not be discussed, the felonies and that the years of terms
8 of imprisonment. And also I have an objection to the whole --
9 I haven't been able to have been afforded a pencil, pen or
10 anything even to do a motion in limine for the last five days
11 in jail, so I couldn't rebut his motion in limine. I wanted to
12 do it, but I did not have -- afforded the chance to do it, so
13 that barred me from the judicial process and doing a complete
14 answer to his motion in limine. If you're going to put
15 somebody in prison for 50 years and try him for triple
16 jeopardy, you should be able to be afforded the process to be
17 able to rebut it.

09:30

18 THE COURT: well, I'm allowing you to rebut it orally
19 now, so --

09:30

20 MR. REED: I'm trying -- Your Honor, I'm trying to
21 find it right now. I just got put in this courtroom 3 minutes
22 before you walked in, and I have not had time to rearrange
23 nothing.

09:30

24 THE COURT: I'll have you look at my copy here. Do
25 you have an extra copy, Mr. Wright, by any chance?

1 MR. WRIGHT: Yes, I do, Your Honor.

2 THE COURT: Okay. Give him -- give him that to look
3 at, please.

09:31 4 MR. REED: I need all my notes. If I don't have my
5 notes, I can't get prepared for trial and do these things
6 properly. You know, you've got to be able to get your stuff
7 out. As in -- Number 1 references to the penalty or
8 punishment. That would -- by removing -- by removing the
9 penalty and punishment would actually be legislating from the
09:31 10 bench and not being able to quote the charges, and that would
11 actually be a rights violation. It would be Title 18, 243,
12 where you would be violating my specific rights to letting the
13 jury know of the consequences in this proceeding. You know,
14 it's just absurd that the Court would let a manifest injustice
09:32 15 happen in this instant action, to let the jury not know what
16 they're prosecuting somebody for. They have to know what
17 they're doing.

18 THE COURT: Well, they will know that, of course, but
19 the question --

09:32 20 MR. REED: They have to know if it's a felony and how
21 many years punishable for every count, you know. That would --
22 that would just be complete injustice if that was allowed in
23 this instant action. Also, I request that they hear everything
24 in the Indictment. I also request in a motion in limine for
09:33 25 the jury to be able to ask questions at any given time in this

1 trial.

2 THE COURT: Yes, I intend to allow that. I routinely
3 allow that.

4 MR. REED: Because there's so many different things
5 going on in here with all this and with the -- with the alleged
6 charges that there's -- there is -- everything was done
7 feloniously and fictitiously and fraudulently. We got to make
8 sure that the jury understands what a contract is. By
9 definition I hereby invoke by motion of limine that we use the
10 Pocket Edition or even the Black's Law, Eighth Edition, for all
11 definition of all words in this instant action.

12 In Number 2 --

13 THE COURT: That motion is denied. I am the sole
14 judge of the law, and the jury doesn't deal with issues of law,
15 so I will instruct them on what the law is.

16 MR. REED: Okay.

17 THE COURT: Let me ask the clerk something. Do you
18 have notebooks and pencils to hand out?

19 THE CLERK: Yes.

20 MR. REED: In Number 2, in Tom Wright's motion, that
21 what he's asking would be -- would be legislating over the acts
22 of Congress and charges to Rule 801. When you let -- the only
23 statements 801 -- under Federal Rules of Evidence, 801,
24 statement of the defendant are not hearsay when they are
25 offered by the Government. Well, the Government is an entity.

1 It's a fiction. It's a persona. For evidence under Rule 701,
2 they have no forensic evidence of anything.

3 THE COURT: Well, of course, I have no idea what
4 evidence they have. That's up to them.

09:35

5 MR. REED: And here -- and here they don't want any
6 statements by me or by the co-defendant, Zakiz-aanakwad. It's
7 -- you know, it should be stricken.

8 Sequestration of all witnesses --

09:35

9 THE COURT: I'm going to order that -- I'm going to
10 order that all witnesses on both sides be sequestered.

11 MR. REED: Okay.

12 THE COURT: So that will cut both ways.

09:35

13 MR. REED: I also wanted to -- in the Indictment I
14 wanted to do a motion in limine on Counts 2 and 3 because
15 they're a repeat of the same thing. That would be double and
16 triple jeopardy because it's the exact same thing. It's Title
17 18, 1114, and then it's Title 28 -- or Title 18, 1521. And
18 then Mr. Wright -- and then on Count 2 he says 1521 and 2.
19 There is no 2, and 2 -- there's no 1522, Title 18.

09:36

20 THE COURT: What's your response? Let me see what
21 Mr. Wright's response is to that. What's your response to any
22 of that, Mr. Wright? And again, please be seated so you can
23 use the microphone.

09:36

24 MR. WRIGHT: First of all, Your Honor, on the motions
25 in limine, motion in limine Number 1 references to penalty or

09:36 1 punishment. It's a standard motion that we make in every case.
2 of the -- I don't know -- over a hundred jury trials I've had,
3 it's never been denied. It's common law practice that the
4 Court handles any punishment, if any, that the defendants get.
5 That's not a function for the jury, and they should not be made
6 aware of what any possible penalty or punishment should be, so
7 we would ask the Court to grant that motion.

09:37 8 As far as Number 2, the hearsay statements offered by
9 the defendant, again, that's a standard motion that we make in
10 every case. The concern is the defendant calling witnesses,
11 asking them, "Have you heard what I've said," where they can
12 put in their defense without testifying. It denies us the
13 right of cross-examination.

09:37 14 Number 3 is the motion to use the blackboard in the
15 opening statement, which again is a standard motion.

16 Number 4 with Mr. Kellerman at the counsel table is
17 standard motion.

18 The Court has already ruled on sequestration.

09:37 19 The last motion that we have is plea offers or
20 negotiations. I'm concerned that one or both of the defendants
21 might make some claim that the Government offered in a plea
22 agreement to dismiss one or more counts of the Indictment prior
23 to trial. The plea negotiations are common before any case
24 ever goes to trial, and once they're rejected, basically all
09:37 25 bets are off and all counts become live. So we would ask the

1 Court to grant all of our motions in limine.

2 Regarding the last couple things that Mr. Reed talked
3 about, the difference between Counts 2 and 3, I think the Court
4 knows this. Count 2 alleges that they attempted to file or did
09:38 5 file a lien against Judge Hovland. Count 3 says they attempted
6 to file a lien or did file a lien against Mr. Jordheim, the
7 U.S. Attorney. There's two different victims in the case.

8 The last one he talks about is 18 USC, Section 2.
9 That's not supposed to be 1521 and 1522. It's supposed to be
09:38 10 18 USC, Section 2.

11 THE COURT: Yeah, I think that is the correct
12 citation. All right.

13 MR. REED: That's supposed to be 18, Section 2? How
14 come it doesn't say Title 18 U, Sec 2 -- USC Sec. 2 if it's an
09:38 15 addition?

16 And then also there's another issue that if he's
17 going to charge something, everything was -- there's not a --
18 it was done -- he's saying that the act was done all at one
19 time. How can you do something three times, get charged three
09:38 20 times for one single act?

21 THE COURT: Well, the allegation is that there are
22 different victims. That's Count 1 --

23 MR. REED: It's all one act. It doesn't matter. It
24 has to pertain to act, and the act of Congress specifically
09:39 25 says that. In the creation of the courts and the laws, it says

09:39 1 that if it's one act, it's one act. It's not one agency
2 because there's 15 people under one act. Then if that's the
3 case, Your Honor, then how come he didn't put everybody on that
4 lien in here and name every act if that's the case? That's a
5 manifest injustice.

6 THE COURT: Okay. Well, the motions in limine, if
7 you will, of the defendants are overruled. The motion of the
8 Government in limine is sustained with qualification, as I
9 said, that the sequestration thing applies to everyone.

09:39 10 I guess the fact that it's a routine motion doesn't
11 mean it should be granted, but I have seen that motion many
12 times in other cases, and there's nothing controversial about
13 that. It's not up to the jury as to what the penalties might
14 be or what the guidelines are or something of that nature. The
09:40 15 sentencing process, if the defendants are found guilty of
16 anything, is entirely up to the Court. And, in fact, juries
17 are rather routinely instructed that they are not to concern
18 themselves with penalties or sentencing matters. That's
19 entirely up to the Court. I may find that the verdict should
09:40 20 be set aside for that matter, so those motions are all granted.

21 Now, is there anything further that we need to take
22 up here before we call the jury in?

23 MR. WRIGHT: No, sir.

24 MR. REED: Yes, Your Honor.

09:40 25 THE COURT: Okay. Go ahead.

1 MR. REED: There was a -- there was some pleadings
2 that were filed. What about my motion for jury instructions?

3 THE COURT: Well, that's premature at this time.
4 We'll take that up at the conclusion of the case, of course.

09:40

5 MR. REED: Okay. And then there was a motion filed
6 over a month ago that has not been answered yet at this point
7 in time in this instant action.

8 THE COURT: What is the nature of that motion?

09:41

9 MR. REED: The nature of that motion is -- it was
10 under Title 5, contempt of Constitution, administrative notice,
11 nature and cause of writ of error coram nobis, demand for
12 dismissal for lack of judicial -- for lack of jurisdiction.

09:41

13 This Court is still -- ever since the beginning I have tried to
14 use the rule book and go right by the rules, go through Rule 1,
15 all the way through to move this case properly, and just ask
16 for them to show jurisdiction over a sovereign native nation
17 that is held by Congress and has a declaratory judgment against
18 any and all states of the union by and through the session of
19 union of states of the Supreme Court of the United States of
20 America, declaratory judgment, volume 203, against bringing any
21 action against any Little Shell -- Little Shell Nation in any
22 case, civil, criminal, anything. I have proven in my pleadings
23 that that is so.

09:42

09:42

24 You have legislated from the bench, Your Honor, and
25 removed those pleadings and denied those, and you have

09:43

1 legislated and you have overruled the acts of Congress. And I
2 would like to know why before we even bring in a jury and be in
3 honor and superprotest of dishonor. That's all I'm asking for
4 is honor here. I'm not trying to shortchange anything. I do
5 not belong or prescribe to anything of a comme positatus (sic)
6 group or any rights or patriots groups, and I denounce those
7 groups. Here and in and on and for the record, I don't believe
8 in that.

09:43

9 Just because I'm Native, and you've seen -- you have
10 personally seen -- everybody in this courtroom has personally
11 seen my pedigree chart. I'm Native. I may look part white,
12 but I'm Native through and through to the bone. I stand in
13 honor, and I want to know why these aren't being answered and
14 why they're not being answered in honor, and that's all. Why
15 can't we be in honor in here? Why do we have to have these
16 shifty little things and this unintelligible thing?

09:43

17 Because, you know, Your Honor, just as I sit here and
18 look you in the eye, I can tell that you can't be -- can't
19 honestly sit there and say that those documents that I'm having
20 to handwrite because they won't give me any way to defend
21 myself, which would be -- if I was under your Constitution,
22 would be my First Amendment right under the -- under the Fifth
23 Article, right to the court, and you have denied that to me all
24 the way. You put me in a jail. You don't give me law books.
25 You don't give me a computer to look up a case. You don't give

09:43

09:44

1 me a pen. You don't give me pencils. You don't give me
2 nothing, and then you sit here and say -- and then -- and then
3 you appoint standby counsel.

4 THE COURT: I didn't, but somebody did.

09:44 5 MR. REED: Somebody did it that should have never
6 even done it because she was on the very liens that was being
7 brought in by the Court, so she was in void. She was devoid
8 right there. The Court was devoid when they brought it because
9 it was under Daniel L. Hovland. And then you had a Magistrate
10 Alice Senechal that ruled on that and appointed standby counsel
11 that was on the very liens that she was voiding on. You can't
12 -- you can't sit there and rule on any motion that has -- that
13 pertains to you. That makes the Court void instantly, and I've
14 proven that in here.

09:45 15 But here you appoint counsel, two really nice people.
16 I asked them, I said, do you know anything about the authority
17 of the United States when it comes to a sovereign native
18 nation? Have no idea. They have never -- they have never been
19 there through international law, so you see right now we're
09:45 20 sitting here in a dilemma because I have honorably and honestly
21 put forth proper pleadings, and nothing has been done, and I
22 demand that the jury even knows about this. They have to. You
23 can't let this stuff go in these actions.

09:45 24 How can -- how can the United States bring a claim
25 against a sovereign native nation under the Foreign Sovereign

09:46 1 Immunity Act? And how can this Court -- the Court can't, but
2 how can you, as an honorable judge of the United States of
3 America, appointed by a president to actually sit in the
4 capacity of an Article III Court, if it was an Article III
5 Court instead of a military court of the silent judicial notice
6 you are giving me now, are -- are we under war right now? I
7 need to know that question. Are we at war? Because I know
8 war.

09:46 9 You know, I've got a lot of, you know, honest
10 questions. I'm not sitting here trying to throw anything off.
11 If somebody's done something wrong and something is done
12 illegal, then let's get down with it and pay for it, but what
13 he's brought forth and what he's done and what the United
14 States has done, it's all been done by contract and it's all
09:46 15 been proven through the pleadings, and you've even seen it.

16 And then I even get -- three days prior to trial
17 you're supposed to put in the -- a grand jury and the grand
18 jury Indictment and their concurrence form for how they
19 concurred. I still haven't received those, so this Court is
09:46 20 vialated (ph) right now.

21 THE COURT: Okay. Well --

22 MR. REED: I want to know why this hasn't been
23 answered.

24 THE COURT: I ruled previously on all pretrial
09:46 25 motions, and if I didn't, all such motions are denied. This

1 Court has jurisdiction. The Court has jurisdiction over the
2 subject matter and over the persons, the defendants, and we're
3 going to go to trial.

09:47

4 MR. REED: Your Honor, all due respect again, where's
5 your proof? Prove it.

6 THE COURT: I don't -- I don't furnish proof. I
7 don't answer questions, and I don't give --

09:47

8 MR. REED: You have to furnish proof. If you don't,
9 the Supreme Court says that you can't move forward. And are
10 you overruling the Supreme Court right now? Is that what
11 you're doing?

12 THE COURT: I don't answer questions of that nature.
13 If I make an error, the Court of Appeals in St. Louis,
14 Missouri --

09:47

15 MR. REED: In and on and for the record, let it state
16 that the Honorable Judge B. Kornmann is void. He is overruling
17 the acts of Congress because he will not answer it. He has
18 violated my rights under Title 18, 243. Also, Title 18,
19 Section 4, states that he cannot do it. He must be arrested.
20 Marshal, arrest this man.

09:47

21 MR. WRIGHT: Could I ask that he be cited for
22 contempt of court, Your Honor?

09:48

23 THE COURT: He's getting close to that. Keep your
24 voice down, first of all. Don't be hollering at me. I'm not
25 hollering at you and neither is Mr. Wright, so if you don't

1 proceed in an orderly manner here, I'll have you removed from
2 the courtroom.

09:48 3 MR. REED: I'm trying to proceed in a real orderly
4 manner and just be honest and honorable in this thing. And you
5 have once again violated the Supreme Court rules. You have
6 violated all the laws that are even prescribed in the book, so
7 this is considered a kangaroo court.

8 THE COURT: I understand that's your opinion.

09:48 9 MR. REED: That's not my opinion. It's proof because
10 you will not -- you will not prove. He who alleges must prove,
11 don't they?

12 THE COURT: You're entitled to your opinion. I'm not
13 trying the case for the Government. I'm not the prosecutor, so
14 I'm not -- I don't plan on proving anything. All right.

09:48 15 MR. REED: How come Mr. Wright hasn't proved anything
16 so he has -- I motion to dismiss right now, lack of
17 jurisdiction.

18 THE COURT: That motion again is denied. All right.
19 I think we're ready to call the jury.

09:48 20 MR. WRIGHT: Your Honor?

21 THE COURT: Yes.

22 MR. WRIGHT: If I may, I don't know if Mr. -- if
23 you've asked Mr. Davis if he has anything to add on this. Mr.
24 Reed has kind of done all the talking, just for the record.

09:49 25 THE COURT: Well, sure. Do you have anything to say,

1 sir?

2 MR. WRIGHT: As far as the motions pretrial?

3 THE COURT: Yes, as far as the pretrial motions.

4 MR. DAVIS: Everybody else got to introduce
5 themselves. May I?

6 THE COURT: Yes. Certainly.

7 MR. DAVIS: I'm trying to be patient and polite.
8 Okay. I'm Zakiz-aanakwad. I'm the spokesperson of my people.
9 I'm a UCC lien right holder of my person, Gregory Allen Davis.

10 I have all discharge and all instruments filed within this
11 court. I may discharge anything I need to as who I am. We
12 call ourselves the Esens people. That means we are Little
13 Shell people. That's what it means. That means we -- we have
14 -- and we know this. We have, like Mr. Reed has said, a
15 declaratory judgment. We are the land owning entity here. We
16 own the land this building sits on. That's it. We are the
17 indispensable party. We have default jurisdiction as a tribe.

18 Yes, we are not a recognized tribe. We will not sign
19 underneath that act because then we waiver all our rights to
20 our trustee, and I have -- we have never done that. How they
21 can bring any action against us -- just like Mr. Reed said, but
22 for more, how they can do that to me? I am the blood relative
23 of all that. It's in my blood. Nobody -- nobody come made me
24 it. I was born it.

25 And I don't see how the government, my trustees, can

09:51

1 come against me, the trustor, and not expect me to give them a
2 one -- a warning, a warning, and I did on their contract. I
3 told them of their debts, duties and liabilities, just like I
4 told this Court and all the people in this court, acting in
5 this court, for this court. That was in that affidavit of
6 obligation.

09:51

7 In there it says -- and I filed the same thing with
8 his. I even done more than that. I even called and talked to
9 people. I let them know firsthand, you come against us, you
10 violate that, I will lien you up. Nobody came to me. Nobody
11 come to my people diplomatically. A tribe is a government.
12 That government is our trustee. They never came to us and
13 asked us, can we settle this peacefully. Instead they sent
14 their soldier with his gun. He threatened us. It would be
15 different if he left his gun at home, came to us and said we
16 want to talk.

09:51

09:52

17 Mr. Hovland, I understand his concern. I would be
18 very concerned somebody filed that on me too, just like I'm
19 very concerned what this Court is doing here right now. Why
20 didn't they go to my people? I'm the spokesman for them, just
21 like the president is yours, the same thing. Sorry I hollered.
22 I'm passionate, and, you know, this continues on here. I
23 promise not to holler at anybody because I am pretty pissed.
24 why? I mean, put us in a room with all these people who are
25 doing this, we'll probably walk out with a diplomatic solution.

09:52

1 He can be their agent. We could get -- all go home because
2 there is a solution here. It was never brought to us.

09:53 3 And the tribe is coming. They're bringing some more
4 papers. They're going to come sit in here. They're going to
5 listen. They're going to take notes. They want to know why no
6 diplomatic solution was offered to us. I mean, I'm just
7 telling you and this Court that on and for the record we are
8 peaceful. We don't go with guns and threaten them. We don't
9 send our lawyers over there with a gun. Just having the gun on
10 him when he was there threatening to arrest, once again --

11 MR. REED: The land that he doesn't own.

12 MR. DAVIS: Yeah. It's known in civil case 188,
13 civil case 00122 in this same courtroom back in 1888, North
14 Dakota filed, okay, against the United States for control of
09:53 15 all this. United States, our trustee, came in and protected
16 the Little Shell rights, told the Sioux they didn't own it,
17 told the rest of the tribes they didn't own it. They held it
18 in trust for Little Shell, who has yet to sign under that. We
19 have one contract with them. It's called the 1863 treaty.
09:54 20 That's our contract, and we are there by blood right. We are
21 there.

22 THE COURT: All right. Thank you, sir. Okay. Let's
23 call the jury. Now, we're not going to use an alternate juror.
24 I don't think we need that. And so the Government will have
09:54 25 strikes and the defendants, of course, will have strikes.

1 (The jury panel is brought into the courtroom.)

2 THE COURT: Good morning, ladies and gentlemen of the
3 jury panel. I am Charles Kornmann. I'm a United States
4 district judge in Aberdeen, South Dakota. As you probably
10:04 5 know, a federal judge can try a case anywhere in the United
6 States. I volunteered to go to Puerto Rico, but they sent me
7 to Bismarck. Just kidding. Bismarck's probably better than
8 Aberdeen anyway, so I'm glad to be here. I'm on senior status,
9 which means that I'm a volunteer, basically. If I maintain a
10:05 10 caseload of about 60 percent of the normal active federal
11 district judge, then I can keep my two lawyers and my
12 secretary.

13 what you are doing here today goes back to June of
14 1215 in England at the time of the Magna Carta, when the
10:05 15 English noblemen forced King John to agree to a trial by jury.
16 The Magna Carta, of course, did not guarantee a jury in the way
17 that we have it in our country now. Only the so-called
18 noblemen had the right to a jury trial. Apparently there
19 weren't any noblewomen back then, so they didn't get a jury
10:05 20 trial. The ordinary working people didn't get a jury trial.

21 when our country was a colony, of course, before the
22 Revolutionary War, the King was giving some jury trials, but
23 they were in Nova Scotia, hardly a convenient place for a jury
24 trial, and so we have improved greatly on the Magna Carta since
10:06 25 then. The right to a jury trial, of course, was one of the

1 principal reasons that our ancestors fought and won the
2 Revolutionary War.

3 President John Adams in 1774 stated that, quote,
4 representative government and trial by jury are the heart and
10:06 5 lungs of liberty. without them we have no other fortification
6 against being ridden like horses, fleeced like sheep, worked
7 like cattle, and fed and clothed like swine and housed, end
8 quote.

9 Thomas Jefferson, the author of the Declaration of
10:06 10 Independence, said in 1778 that he considered the right to a
11 trial by jury as the only anchor yet ever imagined by which a
12 government can be held to the principles of its Constitution.
13 He once said that if he was forced to choose between the
14 precious gifts of the First Amendment, the right to freedom of
10:07 15 speech, freedom of religion and all the other rights that we
16 have as American citizens, that he would choose the Sixth --
17 the Seventh Amendment right, which guarantees a trial by jury,
18 and that if he were forced to choose, he would choose the right
19 of a trial by jury.

10:07 20 As you well know, we have three co-equal branches of
21 government under our system. The federal judiciary is the only
22 branch in which citizens participate directly. You, of course,
23 can run for the legislature. You can run to be elected as a
24 member of Congress. You can run for president. If you serve
10:07 25 on a jury, which some of you will, you can tell the federal

1 government and anybody else what to do. You can't go to
2 Congress and tell them what to do. You can't tell the
3 president what to do, but in the federal judiciary you can tell
4 anybody what to do if you're on the jury. You have to follow
10:08 5 the law, of course, which I will tell you about, but you have a
6 great deal of authority here. You are the direct
7 representatives of the people of our country.

8 You cannot volunteer for this duty. If you could,
9 you probably wouldn't. This is the only mandatory duty of
10:08 10 citizenship left, with the military draft having been
11 abolished. The pay is poor. If you work for yourself, you'd
12 certainly rather be on the job. If you work for somebody else,
13 your boss would rather have you working than here. And, in
14 fact, if you don't have a job outside the home, you would
10:09 15 probably rather be home sorting socks than being here.

16 The jury system in our country is, of course, unlike
17 even what we see in the countries of western Europe, where they
18 have three judges who decide most cases. I was a trial lawyer
19 for about 30 years before I became a judge in 1995, and I can
10:09 20 tell you that any lawyer would rather have a jury trial any day
21 than 15 judges because all of you people bring into this
22 courtroom your common sense, your experiences in the ordinary
23 affairs of life. And the system works, not always perhaps,
24 perhaps not a hundred percent, but in most cases the system
10:09 25 works.

1 You will be in every sense judges if you're on this
2 jury. You are the judges of the facts. I am the judge of the
3 law. You and I are on the same team. We don't care who wins
4 or loses, so to speak. Your job and my job is to see that
10:10 5 justice is done here. I thank you again and congratulate you
6 for being here today.

7 Now we're going to -- I'm going to ask some questions
8 of you. We'll start here with people up here in the box, so to
9 speak. Those of you who are in the back of the courtroom,
10:10 10 listen carefully to the questions that I ask of the people up
11 here in the box so that if someone is excused up here and you
12 are -- your name is called and you are asked to come forward,
13 we don't have to go through the same questions again. We can
14 simply ask you whether any of the questions that I asked
10:10 15 previously would have caused you to give some answer.

16 If any of the questions that I ask are matters that
17 you would rather answer in private, just simply so indicate and
18 we'll step off to the side here with the court reporter and the
19 parties, and you can answer the question. We're not trying to
10:11 20 pry into your personal affairs or to embarrass anyone. We are
21 trying to do the best we can to make sure that both sides
22 receive a fair trial.

23 This is a criminal case, and the Government is
24 represented by Assistant United States Attorney Thomas Wright,
10:11 25 if you would stand, Mr. Wright, and tell them who's at the

1 table with you again from the FBI.

2 MR. WRIGHT: Good morning, ladies and gentlemen. My
3 name is Tom Wright, and with me at counsel table here is Aaron
4 Kellerman, FBI agent.

10:11

5 THE COURT: Now, he's with the U.S. Attorney's Office
6 in South Dakota, not North Dakota. Do any of you folks know
7 anyone who works for the U.S. Attorney's Office in North Dakota
8 or South Dakota for that matter. That's the U.S. Attorney's
9 Office, not the State's Attorney, the people that work for the
10 State of North Dakota, or whatever. If you know anybody like
11 that, please raise your hand.

10:12

12 MR. WRIGHT: And, Your Honor?

13 THE COURT: Yes.

10:12

14 MR. WRIGHT: If I may, you told the jurors in the box
15 to acknowledge. I think the jurors on the benches too are --
16 have been drawn also, so are they supposed to acknowledge any
17 of your questions also?

18 THE COURT: Yes. I guess that's right, yes.

19 MR. WRIGHT: I think they're live too.

10:12

20 THE COURT: Yes, that's correct. Thank you, Mr.
21 Wright. Yeah, those of you who are on the front benches, this
22 also applies to you, of course. Let's see. Is that Mr. Grimm?

23 MR. GRIMM: That's correct.

24 THE COURT: Who do you know, sir?

10:12

25 MR. GRIMM: Shon Hastings of Fargo.

1 THE COURT: Does he work for the U.S. Attorney's
2 office?

3 MR. GRIMM: She does, yes.

4 THE COURT: She does. I'm sorry. Okay. Is that
5 correct, Mr. Wright? Do you know?

6 MR. WRIGHT: I have never heard that name, sir.

7 THE COURT: Okay. would that fact in any way
8 influence your decision here?

9 MR. GRIMM: I don't believe so.

10 THE COURT: If you -- let me ask you this. How do
11 you know her?

12 MR. GRIMM: She went to school with my wife.

13 THE COURT: Okay. If you voted -- if you were on the
14 jury here and voted to find the defendants not guilty and you
15 saw her next week or next month, would that bother you at all?

16 MR. GRIMM: No, it wouldn't.

17 THE COURT: Okay. Thank you, sir. Anybody else then
18 who knows anybody who works for the U.S. Attorney's Office in
19 North or South Dakota? (No audible response.)

20 All right. Now, the defendants here, I should have
21 -- I should have introduced them, and so I'm going to call you
22 by your names as we find in the Indictment. That's Michael
23 Howard Reed. Sir, if you would stand so they can take a look
24 at you. What's your address originally, sir?

25 MR. REED: I don't have an original address.

1 THE COURT: Okay.

2 MR. REED: I am -- I live on an Indian reservation,
3 is where I live. I live on Native land, that we don't have
4 addresses or streets or any of that. The closest thing that
5 there is is some people have rural route. I don't know if
6 you're experienced with rural route mailboxes, and I don't have
7 one, so --

8 THE COURT: All right.

9 MR. REED: I just don't have any of that.

10 THE COURT: Mr. Reed is one of the defendants here in
11 this action and is representing himself, as he has the right to
12 do under our Constitution. Is there any one of you folks here
13 again in the jury box or in the front rows there that knows
14 Mr. Reed? If so, please raise your hand. (No audible
15 response.)

16 All right. Thank you, Mr. Reed. He has what's
17 called a standby attorney. In case Mr. Reed wants to ask that
18 attorney any questions, that attorney is here in the courtroom,
19 and that's James Hovey. Would you stand, sir? And you're from
20 Grand Forks, is that right?

21 MR. HOVEY: That's correct, Your Honor.

22 THE COURT: All right. Let's see. You're with,
23 what, Pearson --

24 MR. HOVEY: I'm with the Pearson Christensen & Clapp
25 firm in Grand Forks. The lawyers in our firm are Garry

1 Pearson, Doug Christensen, Richard Clapp, Ron Fischer, Dan
2 Gaustad, Linda Bata, Jon Jensen, Marianne Knudson, Sarah
3 Barron, Joe Quinn, Linda Bata, if I didn't say that name
4 already.

10:15

5 THE COURT: Any of you folks know either Mr. Hovey or
6 any of those other people in his law firm from Grand Forks?
7 (No audible response.) All right. Thank you, Mr. Hovey.

10:16

8 Now, the other defendant is Gregory Allen Davis.
9 That's Mr. Davis. Thank you, sir. And again, he is acting as
10 his attorney, and he's also the defendant here. Is there any
11 of you folks who know Mr. Davis? (No audible response.) All
12 right. Thank you, sir. Now, his standby attorney is Joel
13 Larson, who's also from Grand Forks. Tell us who's in your law
14 firm.

10:16

15 MR. LARSON: I work at the Camrud Maddock Olson &
16 Larson law firm, and we have Patrick Maddock, Gordon Myerchin,
17 Darrell Larson, Scott Jensen, Russ Melland, Tim Dittus, Randy
18 Hanson, Donna Smith, Mike Loesevitz, and Meghan Compton.

10:17

19 THE COURT: Any of you folks know any of those
20 lawyers? (No audible response.) All right. Thank you.

10:17

21 Now, the Indictment in this case -- and the
22 Indictment doesn't mean anything. It just -- that's what the
23 Government claims happened. It's not evidence of anything. It
24 doesn't mean that the defendants are guilty of anything. It's
25 what the Government claims happened here, and which they will

1 have to prove beyond a reasonable doubt.

2 Count 1 charges that commencing on or about
3 September 24, 2009, and continuing through the date of the
4 Indictment, which is June 8, 2010, the defendants, Michael
5 Howard Reed and Gregory Allen Davis, knowingly conspired with
6 each other and with others known and unknown to the grand jury
7 to file in any public record and in any private record which is
8 generally available to the public, a false lien, an encumbrance
9 against the real and personal property of Judge Daniel Hovland
10 and Lynn C. Jordheim, individuals described in 18 United States
11 Code, Section 1114, on account of the official performance --
12 excuse me, on account of the performance of official duties by
13 Judge Hovland and Mr. Jordheim. Mr. Jordheim is the former
14 U.S. Attorney for the District of South Dakota (sic). Judge
15 Hovland, of course, is a U.S. District Judge in North Dakota.

16 MR. WRIGHT: It's North Dakota for Mr. Jordheim, Your
17 Honor.

18 THE COURT: What did I say?

19 MR. WRIGHT: You said South Dakota.

20 THE COURT: Oh, I'm sorry. North Dakota, right. And
21 then the Indictment goes on in Count 1, knowing and having
22 reason to know that such lien and encumbrance was false and
23 contained materially false, fictitious and fraudulent
24 statements and representations, all in violation of 18 United
25 States Code, Section 1521. Is there any one of you folks who's

1 heard anything at all about what the Government says happened
2 as to this Count 1? (No audible response.)

3 Count 2 charges that between on or about
4 September 24, 2009, and the date of the Indictment, in the
5 District of North Dakota, the defendants, Michael Howard Reed
6 and Gregory Allen Davis, did knowingly attempt to file and did
7 file in a public record and in a private record which is
8 generally available to the public, a false lien and encumbrance
9 against the real and personal property of Judge Daniel Hovland,
10 an individual described in 18 United States Code, Section 1114,
11 on account of the performance of official duties by Judge
12 Hovland, knowing and having reason to know that such lien and
13 encumbrance was false and contained materially false,
14 fictitious and fraudulent statements and representations, and
15 did aid and abet each other in committing the offense, all in
16 violation of 18 United States Code, Sections 1521 and 2.
17 Again, is there any one of you folks who has heard anything at
18 all about what the Government claimed happened here as to this
19 Count 2? (No audible response.)

20 Count 3, the Indictment charges that between on or
21 about September 24, 2009, and the date of the Indictment, in
22 the District of North Dakota, the defendants, Michael Howard
23 Reed and Gregory Allen Davis, did knowingly attempt to file and
24 did file in a public record and in a private record which is
25 generally available to the public, a false lien, an encumbrance

1 against the real and personal property of Lynn C. Jordheim, an
2 individual described in 18 United States Code, Section 1114, on
3 account of the performance of official duties by Mr. Jordheim,
4 knowing and having reason to know that such lien and
5 encumbrance was false and contained materially false,
6 fictitious and fraudulent statements and representations, and
7 did aid and abet each other in committing the offense, all in
8 violation of 18 United States Code, Sections 1521 and 2.

9 Again, is there any one of you folks who's heard anything at
10 all about what the Government claimed happened as to that
11 Count 3? Excuse me. Yes, Count 3. (No audible response.)

12 Count 4 charges that between on or about May 1, 2009,
13 and July 1, 2009, in the District of North Dakota, the
14 defendant, Michael Howard Reed, did by threatening
15 communication endeavor to influence, obstruct and impede the
16 due administration of justice; that is, the criminal case
17 entitled *United States of America versus Patrick Allery*, then
18 pending in the United States District Court for the District of
19 North Dakota, by leaving a recorded phone message with Judge
20 Ralph Erickson's chambers in Fargo, North Dakota, in violation
21 of 18 United States Code, Section 1503(a). Has anyone heard
22 anything at all about what the Government claims happened as to
23 that case? (No audible response.) Judge Ralph Erickson is the
24 United States District Judge who sits in Fargo.

25 And in Count 5, the Indictment charges that between

1 on or about May 1, 2009, and July 1, 2009, in the District of
2 North Dakota, the defendant, Michael Howard Reed, did by
3 threatening communication endeavor to influence, obstruct and
4 impede the due administration of justice; that is, the criminal
5 case entitled *United States of America versus Patrick Allery*,
6 then pending in United States District Court for the District
7 of North Dakota, by leaving a recorded phone message with the
8 Federal Bureau of Investigation office in Minot, North Dakota,
9 in violation of 18 United States Code, Section 1503(a). Is
10 there any one of you folks who's heard anything at all about
11 what the Government claims happened as I just read to you from
12 Count 5? (No audible response.)

13 All right. Now I want to tell you just something
14 here. We sit in what's called the Eighth Circuit. The Eighth
15 Circuit sits in St. Louis, Missouri. That encompasses North
16 Dakota, South Dakota, Minnesota, Iowa, Nebraska, Missouri, and
17 Arkansas, so it's kind of up and down the middle of the
18 country. There's a rule that the Eighth Circuit follows that
19 -- and it's the only circuit in the country that does this.
20 why, I don't know, but this is the rule. The Indictment such
21 as I just read to you has to charge in the conjunctive; that
22 is, they use the word "and," whereas, the jury instructions and
23 the law, the statutes read in the disjunctive. They read "or."

24 I think one of the first cases I tried in Pierre,
25 South Dakota, as a judge, at that time I was sending the

1 Indictment in with the jury, and they sent back a question and
2 said, "Why is the Indictment in the conjunctive, and the
3 Court's jury instructions are in the disjunctive," which shows
4 you how intelligent that many juries are, that they saw that.
10:25 5 I was, frankly, somewhat surprised, but that's right. That was
6 a very good question. And so I had to explain that to them, so
7 usually I don't send back the Indictment with the jury anymore
8 because then we just get into those kinds of questions. I
9 don't understand why the Indictment doesn't charge in the
10:25 10 disjunctive, did this or that or this or that, but it doesn't
11 so that's the reason for that.

12 Now, it's difficult to tell in any given case just
13 how long the case is going to try. This is not going to be one
14 of those cases like you read about in California, where it
10:26 15 takes them six weeks to pick the jury, or something. I don't
16 know what's going on in some of those courts. They only work a
17 couple hours a day, I think, and then they take a break, but I
18 think the best estimate here is that this case will take maybe
19 two or three days. That's just a guess. The lawyers don't
10:26 20 know. The parties don't know. I don't know, and I don't care
21 because I get paid the same whether I work or not, so -- but
22 that's a pretty good estimate. We'll be done this week. The
23 case will be in the hands of the jury this week.

24 As I understand it, the clerk's office probably does
10:26 25 a better job here than they do in South Dakota, and they have a

1 pretty good idea that when you show up here, you're ready to go
2 to work and that you're available for jury duty. But is there
3 any one of you that has an overwhelming personal or business
4 problem to make it a terrible hardship for you to serve on this
5 jury? We're not asking you to go to Afghanistan or Iraq, or
6 something. It is inconvenient for everybody, but is there
7 anybody that has an overwhelming problem to sitting on this
8 jury, you folks up here in the front or here? (No audible
9 response) All right. I thank you, ladies and gentlemen.

10 Everyone who is accused of a crime, as these two
11 gentlemen are, is presumed to be innocent or more correctly not
12 guilty. This presumption of innocence remains with these
13 people, with these defendants throughout the trial. And if the
14 Government fails to offer sufficient evidence to convince you
15 beyond a reasonable doubt that each defendant or the defendant
16 in question is guilty, this presumption of innocence alone
17 entitles that person to be found by you as not guilty. Do any
18 of you folks believe you would have any difficulty giving each
19 of these defendants the benefit of the presumption of innocence
20 to which each of these gentlemen is entitled to under our
21 Constitution? If you have any problem with that at all, please
22 raise your hand. (No audible response.) All right. I thank
23 you.

24 During the course of this case and at the end of the
25 case, it is my responsibility to explain to you the law that

1 will be applicable in this case. Do any of you -- is there any
2 reason why any one of you would be unwilling to accept the law
3 which I will give you during the course of this case and at the
4 end of this case? If so, please raise your hand. (No audible
5 response.) Do all of you agree then that you would accept the
6 law that I give you and try to apply that law to the facts as
7 you find them to the best of your abilities? If not, please
8 raise your hand. (No audible response.)

9 I realize that you know very little about this case.
10 All you know at this point is what the Government claimed
11 happened, but is there -- do you know of any reason at this
12 stage why any one of you could not be a fair and impartial
13 juror in this case? If so, please raise your hand. (No
14 audible response.)

15 Now, we have two defendants here. Each of them is
16 obviously a separate defendant. You should judge -- you must
17 judge the case of each defendant separately. Well, Mr. Reed is
18 charged with a couple more counts than Mr. Davis is charged
19 with, so you can't hold that against the other defendant, but
20 you have to -- you have to look at these cases individually,
21 and if you find one guilty or one not guilty, that doesn't mean
22 that you have to reach the same verdict for the other
23 defendant. Do any of you have any problem with that? Do you
24 all promise me that you will judge each of these defendants'
25 cases separately and fairly? (No audible response.)

1 All right. Now, I allow you to bring water into the
2 courtroom after the jury is selected here. Everybody else has
3 water. There's no reason why you can't have it, so if you want
4 to bring water into the courtroom, you're free to do that, of
10:30 5 course. When you come back after a break, just file right on
6 into the jury box. Nobody has an assigned seat. We don't want
7 people crawling over one other. And please -- the parties and
8 I will be in the courtroom waiting for you, so please remain
9 standing until I ask all of you to be seated.

10 I allow jurors to take notes. The clerk will give
11 you notebooks and pencils if you're on the jury, if you want to
12 use them. If you don't want to take notes, that's fine.
13 That's your business too.

14 I also allow the members of the jury to ask
10:31 15 questions. If you want to ask a question, raise your hand
16 before the witness leaves the stand, get my attention, and then
17 you can write out the question. The clerk will come over and
18 take your question. I will look at it. I will read it. If
19 it's okay, I'll ask the question. If it isn't okay under the
10:31 20 Rules of Evidence, I won't ask the question. You can't just
21 ask a question orally. You have to write it out because some
22 questions can't be asked, and I have to pass on that. If I'm
23 in doubt on that, I'll ask the parties to come up and look at
24 the question. Don't -- in asking a question, don't step into
10:31 25 the shoes of the prosecutor or of the defendants. And keep in

1 mind that once that person leaves the stand, it's too late to
2 ask a question, so if you have one, raise your hand right away.

3 If I'm going too long, if you need a break, raise
4 your hand. I sometimes run court too long. I'm not sure what
10:32 5 I'm going to do here. At home I run until 6 o'clock at night,
6 and so that can be a long day. The lawyers accuse me of
7 running night court most of the time, but I'm not sure what the
8 custom is here. I'll try to follow here what goes on in North
9 Dakota more than what I do.

10:32 10 If you're on this jury, be sure that you do not,
11 during the course of the trial at any time, get on the
12 internet. You don't do any research. You don't start looking
13 on the internet for some information or do any research, or
14 anything. Just listen to what you hear in this courtroom.

10:33 15 Don't twitter to anyone or get on a blog, or something. It's
16 getting out of control, frankly, in some of the courts. They
17 have people from the jury sometimes who are sitting there and
18 they'll send a text message to somebody and say, well, we're
19 listening -- I'm listening -- I'm on the jury here, and this
10:33 20 guy is really guilty of something. I'm not sure yet, all kinds
21 of crazy stuff like that. That should not be going on, of
22 course.

23 Don't tell anybody else anything that you're doing
24 here. Of course, if you're on the jury, you don't talk about
10:33 25 the case until the end of the case, when you've heard all of

1 the evidence. And likewise, you don't go home at night or look
2 in the encyclopedia or dictionary, or something, to try to find
3 some question that you have in your mind. Just listen to what
4 the witnesses say in this courtroom on the stand under oath.

10:34 5 All right. Now, the attorneys have the right to
6 strike a certain number of jurors. It's a mandatory
7 strike-down system so that we get to the jury of 12 who will
8 try this case. I'm not going to use an alternate juror.
9 Sometimes we do if it's going to be a very long case, so we're
10:34 10 taking a chance on that because we have to have 12 jurors. I
11 don't want to tie up any more people than I absolutely have to,
12 so we're not going to use an alternate here.

13 All right. I don't have any voir dire questions, so
14 -- any more questions, so the parties may now exercise their
10:35 15 peremptory challenges. The Government will exercise first.
16 Did you tell them how many strikes they have now?

17 MR. REED: It's hard to do this when you're picking a
18 jury. Sorry for the delay. You know, I like to hear -- Your
19 Honor and the jury, I like to hear a little bit about each
10:37 20 individual and what they do for work and stuff like that. I've
21 picked many juries, and normally that's the procedure, and you
22 obviously don't do that, so it's a little different for me to
23 sequester (sic) a jury that I'm not used to knowing a little
24 bit about each individual and who they are, what they -- you
10:37 25 know, so it's going to take me just a little bit here.

1 THE COURT: That's all right.

2 MR. REED: I don't mean to --

3 THE COURT: I just wanted to make sure that you
4 understood how many strikes you have at this point.

10:38

5 MR. REED: Oh, I completely understand, you know, and
6 it's just -- this is for me -- you know, you like to get to
7 know the person. You like to know either just by their voice
8 and -- you know, and what they like and what they know and what
9 they've done in their life and whatnot, and in this case I'm
10 not able to be afforded that.

10:38

11 (The 12-person jury was selected by the parties and
12 counsel.)

13 THE COURT: As I told you, this is a mandatory
14 strike-down process, so -- which we force the parties to do to
15 get to 12 jurors. There's no scientific method to selecting a
16 jury. I can tell you that. I've tried a lot of cases as a
17 lawyer in the 30 years before I became a judge, and never could
18 figure out how to select a jury. It's just wild guesses, for
19 the most part. And if you're not selected, there's no adverse
20 implication, of course, of any kind. It just means that you're
21 lucky and get to go home. Let's wait for those jury panel
22 members to get back here before we read the names of the jury.

10:51

10:51

23 The clerk will now read the 12 members of the jury
24 who will stay and decide this case.

10:54

25 THE CLERK: Kimberly Schlag, Elizabeth Pilgrim.

1 THE COURT: That's scratched. I thought you were
2 reading from the bottom, up. Oh, okay. Start again, please.

3 THE CLERK: Kimberly Schlag, Elizabeth Pilgrim,
4 Connie Barnick, Merrilee Bodvig, Ted Grimm, Elizabeth Swanson,
5 Rhonda Vetter.

6 THE COURT: Wait a minute. Did you skip Lillian
7 wangler? Oh, okay. Go ahead.

8 THE CLERK: Brittany Feil, Kirk Lauer, Kenneth
9 Paulson, Rick Schapp, and Anthony Welder.

10 THE COURT: If your name was not called, you may be
11 excused or stay as you like. And I thank all of you, ladies
12 and gentlemen, for having come here this morning.

13 Those of you who are on the back bench, so to speak,
14 if you would take a seat in the jury box, please. Do you have
15 notebooks and pencils to hand out now? Let's hand those out.
16 If you think you might want to take notes, take a notebook and
17 a pencil. If you think you might have a question, take a
18 notebook and a pencil for sure. If you don't want either one,
19 don't take it. If you would stand, please, raise your right
20 hand, and the clerk will administer the oath to you as a jury
21 to try this case.

22 (The 12-person trial jury is sworn in by the clerk.)

23 THE COURT: Please be seated. I'm going to now give
24 you the Court's preliminary instructions on the law, just to
25 tell you the way things are going to go here, matter of

1 procedure, for example, and then we'll take a recess, about
2 15-minute recess.

3 Members of the jury, I will take a few moments now to
4 give you some initial instructions about this case and about
10:59 5 your duties as jurors. At the end of the trial I will give you
6 further instructions. I may also give you instructions during
7 the trial. Unless I specifically tell you otherwise, all such
8 instructions, both those I give you now and those I give you
9 later, are equally binding on you and must be followed. This
10:59 10 is a criminal case brought against the defendants, Michael
11 Howard Reed and Gregory Allen Davis, by the United States
12 Government. The charges are set forth in what is called the
13 Indictment. You should understand that an Indictment is simply
14 an accusation. It is not evidence of anything.

10:59 15 The Government charges in Count 1 of the Indictment
16 that commencing on or about September 24, 2009, and continuing
17 through the date of the Indictment, in the District of North
18 Dakota, the defendants, Michael Howard Reed and Gregory Allen
19 Davis, knowingly conspired with each other and with others
11:00 20 known and unknown to the grand jury to file in any public
21 record or in any private record which is generally available to
22 the public a false lien or encumbrance against the real or
23 personal property of Judge Daniel Hovland or Lynn C. Jordheim,
24 individuals described in 18, United States Code, Sections 1114,
11:00 25 on account of the performance of official duties by Judge

1 Hovland or Mr. Jordheim, knowing or having reason to know that
2 such lien or encumbrance was false or contained materially
3 false, fictitious or fraudulent statements or representations,
4 all in violation of 18 United States Code, Section 1521.

11:00 5 The Government charges in Count 2 of the Indictment
6 that between on or about September 24, 2009, and the date of
7 the Indictment, in the District of North Dakota, the
8 defendants, Michael Howard Reed and Gregory Allen Davis, did
9 knowingly attempt to file or did file in a public record or in
11:01 10 a private record which is generally available to the public a
11 false lien or encumbrance against the real or personal property
12 of Judge Daniel Hovland, an individual described in 18 United
13 States Code, Section 1114, on account of a performance of
14 official duties by Judge Hovland, knowing or having reason to
11:01 15 know that such lien or encumbrance was false or contained
16 materially false, fictitious or fraudulent statements or
17 representations, or did aid or abet each other in committing
18 this offense, all in violation of 18 United States Code,
19 Sections 1521 and Section 2.

11:02 20 The Government charges in Count 3 of the Indictment
21 that between on or about September 24, 2009, and the date of
22 the Indictment, in the District of North Dakota, the
23 defendants, Michael Howard Reed and Gregory Allen Davis, did
24 knowingly attempt to file or did file in a public record or in
11:02 25 a private record which is generally available to the public a

11:02 1 false lien or encumbrance against the real or personal property
2 of Lynn C. Jordheim, an individual described in 18 United
3 States Code, Section 1114, on account of the performance of
4 official duties by Mr. Jordheim, knowing or having reason to
5 know that such lien or encumbrance was false, or contained
6 materially false, fictitious or fraudulent statements or
7 representations, or that he did aid or abet each other; that
8 is, that they did aid or abet each other in committing the
9 offense, all in violation of 18 United States Code,
11:03 10 Sections 1521 and 2.

11 The Government charges in Count 4 of the Indictment
12 that between on or about May 1, 2009, and July 1, 2009, in the
13 District of North Dakota, the defendant, Michael Howard Reed,
14 did by threatening communication endeavor to influence,
11:03 15 obstruct or impede the due administration of justice; that is,
16 in the criminal case entitled *United States of America versus*
17 *Patrick Allery*, then pending in the United States District
18 Court for the District of North Dakota, by leaving a recorded
19 phone message with Judge Ralph Erickson's chambers in Fargo,
11:04 20 North Dakota, and in doing that he violated 18 United States
21 Code, Section 1503(a).

22 The Government charges in Count 5 of the Indictment
23 that between on or about May 1, 2009, and July 1, 2009, in the
24 District of North Dakota, the defendant, Michael Howard Reed,
11:04 25 did by threatening communication endeavor to influence,

1 obstruct or impede the due administration of justice; that is,
2 the criminal case entitled *United States of America versus*
3 *Patrick Allery*, then pending in the United States District
4 Court for the District of North Dakota, by leaving a recorded
5 phone message with the Federal Bureau of Investigation Office
6 in Minot, North Dakota, in violation of 18 United States Code,
7 Section 15039(a).

8 The defendants have pleaded not guilty to these
9 charges and are presumed to be not guilty unless and until
10 proved guilty beyond a reasonable doubt. It will be your duty
11 to decide from the evidence whether the defendants are guilty
12 or not guilty of the crimes charged. In ordinary lay usage,
13 the term, quote, not guilty, end quote, is often considered to
14 be synonymous with, quote, innocent, end quote. The news media
15 often confuses these terms. The terms are not synonymous.

16 Not guilty is a legal finding by the jury that the
17 prosecution has not met its burden of proof. A not guilty
18 verdict can result from either of two states of mind on the
19 part of the jury. Number one, that you believe a defendant is
20 factually innocent and did not commit the crime or crimes; or
21 two, although you do not necessarily believe that a defendant
22 is innocent and even tend to believe that he did commit the
23 crime or crimes, the prosecution's case was not sufficiently
24 strong to convince you of that defendant's guilt beyond a
25 reasonable doubt.

1 From the evidence you will decide what the facts are.
2 You are entitled to consider that evidence in the light of your
3 own observations and experiences in the affairs of life. You
4 may use reason and common sense to draw deductions or
5 conclusions from facts which have been established by the
6 evidence. You will then apply those facts to the law which I
7 give you in these and in my other instructions, and in that way
8 reach your verdicts.

9 You are the sole judges of the facts, but you must
10 follow the law stated in my instructions whether you agree with
11 it or not. Do not allow sympathy or prejudice to influence
12 you. The law demands of you just verdicts unaffected by
13 anything except the evidence, your common sense, and the law as
14 given to you by the Court. You should not take anything I may
15 say or do during the trial as indicating what I think of the
16 evidence or what I think your verdicts should be. Finally,
17 please remember that only these defendants are on trial here,
18 not anyone else. And that these defendants are on trial only
19 for the crimes charged, not for anything else.

20 I have mentioned the word "evidence." Evidence
21 includes the testimony of witnesses, documents and other things
22 received as exhibits, any facts that are stipulated; that is,
23 formally agreed to by the parties, and any facts that are
24 judicially noticed; that is, facts which I say you may, but are
25 not required to accept as true even without evidence.

1 Certain things are not evidence. I will list those
2 things for you now. One, statements, arguments, questions and
3 comments by the people sitting at these two tables here are not
4 evidence unless they're under oath and on the witness stand.

11:08

5 Two, objections are not evidence. Parties have a
6 right to object when they believe something is improper. You
7 should not be influenced by any objection. If I sustain any
8 objection to a question, you must ignore the question and must
9 not try to guess what the answer might have been.

11:08

10 Three, testimony and questions that I strike from the
11 record or tell you to disregard are not evidence and must not
12 be considered by you.

11:09

13 Four, anything you see or hear about this case
14 outside this courtroom is not evidence unless I specifically
15 tell you otherwise during the trial.

11:09

16 Furthermore, a particular item of evidence is
17 sometimes received for a limited purpose only; that is, it can
18 be used by you only for one particular purpose and not for any
19 other purpose. I will tell you when and if that happens and
20 instruct you on the purposes for which the item can and cannot
21 be used.

11:09

22 Finally, some of you may have heard the terms, quote,
23 direct evidence, end quote, and, quote, circumstantial
24 evidence, end quote. You are instructed that you should not be
25 concerned with those terms. The law makes no distinction

1 between direct evidence and circumstantial evidence. You
2 should give all evidence the weight and value you believe it is
3 entitled to receive.

11:10 4 I think the best explanation that I've heard of the
5 difference between direct evidence and circumstantial evidence
6 is you're standing outside looking up in the sky and you see a
7 jet plane. That's direct evidence that that plane was there.
8 If you look up but don't see a plane, you see contrails, that
9 is circumstantial evidence that the plane was there.

11:10 10 In deciding what the facts are, you may have to
11 decide what testimony you believe and what testimony you do not
12 believe. You may believe all of what a witness says or only
13 part of it or none of it. In deciding what testimony of any
14 witness to believe, consider the intelligence of the witness,
11:10 15 the opportunity the witness had to see or hear the things
16 testified about, the memory of a witness, any motives the
17 witness may have for testifying a certain way, the manner of
18 the witness while testifying, whether the witness said
19 something different at an earlier time, the general
11:11 20 reasonableness of the testimony, and the extent to which the
21 testimony is consistent with other evidence that you believe.

11:11 22 At the end of the trial you must make your decision
23 on what you recall of the evidence. You will not have a
24 written transcript to consult, and the court reporter will not
25 be required to read back lengthy testimony. Therefore, you

1 must pay close attention to the testimony as it is given. If
2 you wish, however, as I told you earlier, you may take notes to
3 help you remember what witnesses said.

4 If you do take notes, please keep them to yourself
5 until you and the other jurors go back to the jury room to
6 decide the case. Do not let note taking distract you so that
7 you do not hear other answers by the witness. Your notes, if
8 you take them, should be used only as memory aids. You should
9 not give your notes precedence over your independent
10 recollection of the evidence. If you do not take notes, you
11 should rely on your own independent recollection of the
12 proceedings, and you should not be influenced by the notes of
13 other jurors. I emphasize that notes are not entitled to any
14 greater weight than the recollection or impression of each
15 juror as to what the testimony might have been. When you leave
16 at night your notes will be secured and not read by anyone. At
17 the end of the trial your notes will be shredded and not read
18 by anyone.

19 During the trial it may be necessary for me to talk
20 with the parties out of the hearing of the jury either by
21 having a bench conference with you present in the courtroom or
22 by calling a recess. Please understand that while you are
23 waiting, we are working. The purpose of these conferences is
24 to decide how certain evidence is to be treated under the rules
25 of evidence and to avoid confusion and error. We will, of

1 course, do what we can to keep the number and length of those
2 conferences to an absolute minimum.

3 To ensure fairness there are certain rules that you
4 need to follow as jurors. First, do not talk among yourselves
11:13 5 about this case or about anyone involved with it until the end
6 of the trial, when you go back to the jury room to decide on
7 your verdicts.

8 Second, do not talk with anyone else about this case
9 or about anyone involved with it until the trial has ended and
11:13 10 you have been discharged as jurors.

11 Third, when you are outside this courtroom, do not
12 let anyone tell you anything about this case or about anyone
13 involved with it. If someone should try to talk to you about
14 this case or about any person involved in the case, please
11:14 15 report that to me immediately.

16 Four, during the trial you should not talk with or
17 even speak to the lawyers, parties, or witnesses involved in
18 this case. You should not even pass the time of day with any
19 of them. It is important not only that you and I do justice,
11:14 20 but that we give the appearance of doing justice. If a person
21 from one side sees you talking to a person from the other side,
22 even if it is simply to pass the time of day, an unwarranted
23 and unnecessary suspicion about your fairness might be aroused.
24 Therefore, if any lawyer, party or witness does not speak to
11:14 25 you when passing in the hall, riding on the elevator or the

1 like, it is because they are not supposed to do that.

2 Fifth, it may be necessary for you to tell your
3 family, friends, teachers, co-workers or employer about your
4 participation in this trial. You can explain when you are
5 required to be in court and can warn them not to ask you about
6 this case, tell you anything they know or think they know about
7 the case, or even discuss the case in your presence. You need
8 not -- excuse me. You must not communicate with anyone or post
9 information about the parties, witnesses, participants,
10 charges, evidence or anything else related to this case. You
11 must not tell anyone anything about the jury's deliberations in
12 this case until after I have accepted your verdicts or I give
13 you specific permission to do so.

14 If you discuss the case with someone other than the
15 other jurors during deliberations at the end of the case -- at
16 the end of the trial, it could create the perception that you
17 have clearly decided the case or that you may be influenced in
18 your verdict by their opinions. That would not be fair to the
19 parties and it may result in the verdicts being thrown out and
20 the case having to be retried.

21 During the trial, while you are in the courthouse and
22 after you have left for the day, do not provide any information
23 to anyone by any means about this case. Thus, for example, do
24 not talk face to face or use any electronic device or media
25 such as the telephone, a cell phone, smartphone, BlackBerry,

11:17

1 PDA, computer, the internet, any internet service, any text or
2 instant messaging service, any internet chat room, blog or
3 website such as Facebook, MySpace, YouTube, or Twitter, or in
4 any other way to communicate to anyone any information about
5 this case until after I have accepted your verdicts.

11:17

6 Six, do not do any research on the internet, in
7 libraries, in the newspapers, or in any other way or make any
8 investigation about this case on your own. Do not visit or
9 view any place discussed in this case. Do not use internet
10 programs or any other device to search for or to view any place
11 discussed in the testimony. Do not research any information
12 about this case, the law, or the people involved, including the
13 parties, the witnesses, the lawyers, or even the judge.

11:17

14 Seven, do not read any news stories about this case
15 or go on the internet. Do not read any blogs or listen to any
16 radio or television reports about the case or about anyone
17 involved with it. I do not know whether there are going to be
18 any news reports concerning this case. I doubt it. I don't
19 see anybody from the media here in the courtroom, but if there
20 are, make sure that you do not read anything at all or listen
21 to any news reports as to this case.

11:18

11:18

22 The parties, in short, have the right to have the
23 case decided only on evidence that they know about, that has
24 been introduced here in court. If you do some research or
25 investigation or experiment that we don't know about, then your

1 verdict may be influenced by inaccurate, incomplete or
2 misleading information that has not been tested by the trial
3 process, including an oath to tell the truth and by
4 cross-examination. All the parties are entitled to a fair
5 trial rendered by an impartial jury, and you must conduct
6 yourselves so as to maintain the integrity of the trial
7 process. Failure to follow these instructions may result in
8 the case having to be retried and could result in you being
9 held in contempt.

10 Eight, do not make up your mind during the trial
11 about what the verdict should be. Keep an open mind until
12 after you have gone back to the jury room to decide the case
13 and you and the other jurors have talked about the evidence.
14 You must leave your cell phone, PDA, BlackBerry, smartphone
15 iPhone, and any other wireless communication devices in the
16 jury room during the trial and may only use them during breaks.
17 However, you are not allowed to have cell phones in the jury
18 room during your deliberations. You may give your cell phone
19 to the deputy clerk for safekeeping just before you start to
20 deliberate. It will be returned to you when your deliberations
21 are complete.

22 The trial will proceed in the following manner.
23 First, the Government attorney makes an opening statement.
24 Next, the defendant or the defendants may, but do not have to
25 make an opening statement. An opening statement, remember, is

11:20

1 not evidence, but is simply a summary of what that party thinks
2 the evidence is going to be. The Government will then present
3 its evidence, and the defendants or their attorneys, standby
4 attorneys, may cross-examine those witnesses. Following the
5 Government's case, the defendants may, but do not have to,
6 present evidence, testify, or call other witnesses. If a
7 defendant calls a witness, the Government attorney, of course,
8 may cross-examine those witnesses.

11:20

9 After presentation of the evidence has been
10 completed, the attorneys or the defendants will make their
11 closing arguments to summarize and interpret the evidence for
12 you. As with opening statements, closing arguments are not
13 evidence. I will then instruct you further on the law, and
14 after that you will retire to deliberate on your verdicts.

11:21

15 Okay. We're going to take a 15-minute recess now.
16 We'll see how it goes here as to when we're going to quit for
17 the noon hour. It may be a little bit after 12:00. Anybody
18 have a problem with that? We'll see how it goes. All right.
19 The jury is excused. Follow the clerk. All rise.

11:21

20 (A recess was taken from 11:21 a.m. to 11:48 a.m.,
21 the same day.)

22 THE COURT: We are at the stage of the trial now for
23 opening statements. Mr. Wright, you may proceed.

11:48

24 MR. WRIGHT: Thank you, Your Honor. And with the
25 Court's permission, may I move the dry eraser board in front of

1 the jury?

2 THE COURT: I'm sorry. Say again.

3 MR. WRIGHT: May I move the blackboard in front of
4 the jury?

11:48

5 THE COURT: Yes, you may. If the defendants want to
6 move over there so you can see that blackboard, you're free to
7 do that.

8 MR. REED: Okay. Thank you.

11:49

9 THE COURT: You can sit there on the bench over
10 there.

11 MR. REED: All right.

11:49

12 MR. WRIGHT: May it please the Court, counsel. Good
13 morning, ladies and gentlemen. As the Judge said, my name is
14 Tom Wright, and I'm an assistant United States attorney. This
15 is the time of the trial called the opening statements. It's
16 when I'll have an opportunity to forecast what I believe the
17 evidence will show. Now, the opening statement is not
18 evidence. It's a road map or a forecast of what we anticipate
19 the evidence in this case will be.

11:49

20 The case against these two defendants actually grew
21 out of or arose from another case, so I need to give you some
22 brief background on that case. In November of 2008, the U.S.
23 Attorney's Office for the District of North Dakota filed a
24 narcotics Indictment against 17 defendants. All 17 defendants
25 were charged with the same Indictment, one Indictment, 17

11:49

1 different names on it. Two of the 17 defendants were named
2 John Lenoir and Patrick Allery, and they had some connection
3 with an unrecognized Indian tribe here in North Dakota called
4 the Little Shell Band. I've got Mr. Allery's name up here on
5 the board. Now, the fact that these two men were associated
6 with this Indian tribe had nothing to do with the reason why
7 they were indicted. Fifteen other people on the same
8 Indictment were also charged with narcotics offenses.

9 Whenever the Government files an Indictment against
10 an individual, that Indictment is assigned to a specific United
11 States court judge. Once the case hits the district court, one
12 particular judge presides over the balance of that case. And
13 this 17-count Indictment -- 17-defendant Indictment was
14 assigned to Judge Ralph Erickson, the judge from Fargo, North
15 Dakota. Judge Erickson is hearing Allery's case, and he's also
16 hearing the case involving the 16 other defendants all listed
17 on the same Indictment. The federal judge, ladies and
18 gentlemen, is appointed by the president of the United States,
19 with Senate approval. They're appointed for life, and it's a
20 very responsible and important job.

21 Mr. Allery, who also goes by the name of Neegee,
22 N-E-E-G-E-E, entered court and he pled not guilty, and this
23 case started moving through the system. He was supposed to
24 show up in March of 2009 for an intermediate hearing in the
25 case, and he failed to show up, and so Judge Erickson did what

1 any other judge would do in the case. He issued a warrant for
2 Mr. Allery's arrest. He wants him re-arrested. Allery had
3 been to court once before. He pled not guilty, and now they
4 couldn't find him. They issued a warrant. In his case it's
5 essentially called a fugitive status, so the FBI starts looking
6 for Mr. Allery.

7 Mr. Allery and, again, Mr. Lenoir had some
8 association with this Little Shell Band, and that takes us to
9 the two defendants in this case, Mr. Reed and Mr. Davis.

10 Mr. Reed and Mr. Davis both belong to or have some connection
11 with the Little Shell Band. And the evidence will show both
12 Mr. Reed and Mr. Davis believed incorrectly that the federal
13 government has no jurisdiction over people that belong to this
14 tribe. They basically believe that all of the members of that
15 tribe are somehow immune from federal prosecution, including
16 narcotics prosecution. And Mr. Reed is especially mad that the
17 Government is prosecuting Mr. Allery, and he's especially mad
18 at Judge Erickson because he has not dismissed the case and
19 because he issued a warrant for Mr. Allery's arrest. So as
20 Mr. Allery is on fugitive status, the FBI starts looking for
21 him in the area where Mr. Reed and Mr. Allery live.

22 Mr. Reed then sends an unsolicited fax to the FBI in
23 March of 2009. He sends a fax to the FBI office, which
24 essentially says you have no business prosecuting Allery. You
25 have no business looking for him. Cease and desist your

1 efforts. The FBI gets the fax. Pursuant to the Judge's order,
2 they're still looking to arrest Mr. Allery on this case.

3 while Mr. Allery is on fugitive status, Mr. Reed
4 decides to make an unsolicited telephone call to the chambers
11:53 5 of Judge Ralph Erickson, the judge here -- the judge in North
6 Dakota, Fargo judge. Now, Judge Erickson has not called Mr.
7 Reed. He doesn't even know who Mr. Reed is. He's not
8 expecting this call, but Mr. Reed gets on the phone and calls
9 Judge Erickson's chambers after hours and leaves a very
11:53 10 threatening, demanding voice mail.

11 when Mr. Reed makes this telephone call -- and the
12 evidence will show it's a very unusual call because that's not
13 part of the federal judge's job, to be told by people what
14 cases to dismiss or not. When Mr. Reed makes this call, it
11:53 15 comes in at about 5:15 p.m. There's nobody there. It
16 automatically kicks to the answering machine or the voice mail.
17 Mr. Reed leaves this voice mail. That recording will say --
18 and we will attempt to play that for you at this trial.
19 Mr. Reed at this time calls himself the chief justice, tells
11:53 20 the Judge during the telephone call that he needs to dismiss
21 this case or else.

22 And here's a part of what Mr. Reed tells Judge
23 Erickson on this voice mail message that he leaves. Hello,
24 Mr. Erickson. This is chief justice Michael Howard Reed. You
11:54 25 have violated your oath. You have violated all the titles.

11:54 1 You have threatened Mr. Allery. You have come in as a
2 third-party intervenor, and I will -- and when you listen to
3 this tape, please listen to how Mr. Reed says "I will." He
4 says, I will file show cause against you. John Lenoir, Patrick
5 Allery, they're Native, they're Little Shell. They own the
6 land.

11:54 7 You have no venue and jurisdiction. You will be
8 showing cause, along with everyone in this case, unless you get
9 rid of them, dismiss the case. If they are not in 24 hours,
10 you will have to show cause in front of Congress and the whole
11 state of North Dakota, and you will have to produce your right
12 of claim that you own this land and you don't own the Court or
13 that law. He tells him twice to judge himself, so Mr. Reed
14 leaves this unsolicited and unexpected voice mail for a federal
11:55 15 judge, basically telling him you better get rid of this case or
16 else. That call came in about 5:15 p.m.

11:55 17 The next day the Judge's law clerk is the first one
18 in to work. He hits the voice mail or the answering machine
19 and listens to the message. Now, ladies and gentlemen, a law
20 clerk is an attorney. It's a lawyer that works for a federal
21 judge, and ordinary law clerks, and especially federal law
22 clerks, have done fairly well in law school. They're very good
23 students, and as reward for doing well, one of their first jobs
24 is they get to clerk for a federal judge. Some law clerks are
11:55 25 temporary. They will work for a federal judge for a year or

1 two, and some are permanent. They can work for 10 or 20 years
2 for the same federal judge.

3 And the man who comes to work the next day and is
4 Judge Erickson's law clerk is a man named Ladonne Vik, and he
11:55 5 listens to this message, and he is a permanent law clerk. He's
6 worked for Judge Erickson for ten years or more, and he knows
7 what kind of calls come in. He's checked the voice mail about
8 every day for the last ten years, and he knows what is a normal
9 call and what is something that's very unusual. He punches the
11:56 10 button and he listens to this call from Mr. Reed the day
11 before, and he is very, very concerned because this is an
12 unusual call coming in for the federal judge.

13 Mr. Vik, the first thing he does after he listens to
14 the call is he calls the U.S. Marshal Service. And, ladies and
11:56 15 gentlemen, the U.S. Marshal Service is the agency responsible
16 for the security of federal judges. The law clerk notifies the
17 U.S. Marshal Service. The probation office is notified, so is
18 the clerk's office, and eventually all 17 attorneys on the
19 Allery case are not only notified, but they're given a copy of
11:56 20 the voice mail. I told you there were 17 defendants on this
21 case, so that means there's 17 attorneys, and they all get this
22 voice mail. And the general message that goes out is somebody
23 named Michael Reed is trying to shake down the judge on this
24 case, so there's a lot of concern amongst people associated
11:56 25 with this case.

1 The FBI begins investigating this call that came in.
2 They're trying to figure out what's going on here. And a few
3 weeks after that, Mr. Reed, the defendant in this case, makes a
4 second call, only this time he doesn't call the Judge's office.
11:57 5 He calls the FBI in Minot, North Dakota, and like the first
6 call, when he calls the FBI, it's after hours, and he leaves
7 the second voice mail, which we also have a copy of. This
8 voice mail is for the Minot office of the FBI. Mr. Reed leaves
9 a message for the FBI, whose name is Ryan O'Neil.

11:57 10 During the second call about a month after the call
11 to the Judge, Mr. Reed's tone is friendlier. He's not as
12 angry. You'll hear the two tapes. You'll see the difference
13 in the tone of his voice, but when he leaves this second
14 message for the FBI, Mr. Reed says something that really spooks
11:57 15 the FBI. Mr. Reed says, you have a judge that's about ready to
16 get the trigger pulled on him.

17 This call is essentially something like this. This
18 message is for Ryan O'Neil. This is Michael Howard Reed,
19 attorney general of the Little Shell Nation. On the call to
11:58 20 the Judge, he calls himself the chief justice. On this call he
21 calls himself the attorney general. I have some problems with
22 Neegee, who's Patrick Allery. I'm getting the runaround when
23 it comes to talking with the U.S. prosecuting attorney. I have
24 some issues, and you have one of your judges that's about ready
11:58 25 to get the trigger pulled on him, so call me back. Good-bye.

1 when the FBI hears this call, they move very quickly, ladies
2 and gentlemen. They have Mr. Allery in custody and Mr. Reed in
3 custody in about a week.

4 After they arrest Mr. Reed, they ask him, did you
5 make that call to Judge Erickson's chambers? Mr. Reed says,
6 yes, I did. Did you make the call to the FBI? Yes, I did.
7 The FBI asks Mr. Reed, what's your problem with Judge Erickson?
8 why are you calling him, telling him to dismiss cases like
9 this? And Mr. Reed tells the FBI, well, that judge does not
10 follow the law, he's violated his oath of office, legislates
11 from the bench, so he gives all these reasons why he doesn't
12 like the judge and why he thinks he's entitled to tell this
13 judge to dismiss the cases. They talk more about it, and
14 Mr. Reed mentions to the FBI there's going to be a showdown at
15 the O.K. Corral.

16 The next day is June 16, 2009, and the FBI gets a
17 search warrant. They get a search warrant for the office of
18 the Little Shell Band, where Mr. Reed has his office. A search
19 warrant is an order signed by the judge giving law enforcement
20 the permission to go ahead and do a search of a certain area.
21 They do a search of Mr. Reed's office and they find a gun in a
22 safe, and they find ammunition, and they find a fully loaded
23 magazine.

24 The next day they re-interview Mr. Reed and they say
25 they found a gun, is it yours? And he says, yes, it is, and he

1 even refers to it as "my gun." So the first case you're going
2 to hear about during this trial, ladies and gentlemen,
3 primarily involves the defendant, Michael Howard Reed. And it
4 will show that he's upset that the Government is prosecuting
5 one of his friends. He has a problem with the Judge, the fact
6 the Judge has not dismissed the case. He has a problem with
7 the Judge's philosophy. He wants the case dismissed, and in an
8 attempt to influence justice, he makes two calls, one to the
9 federal judge's chambers and one to the FBI. The first call is
10 a demanding call saying dismiss the case. The second one he
11 says the judge is going to get the trigger pulled on him. This
12 is a man who has a gun and has ammunition.

13 That takes us to the second case you're going to hear
14 about that involves both Mr. Reed and Mr. Davis. When they
15 find the gun in the safe in Mr. Reed's office, the U.S.
16 Attorney's Office for North Dakota charges Mr. Reed with being
17 a fugitive from justice in possession of a firearm. This is
18 again a separate federal Indictment filed just against
19 Mr. Reed.

20 And, of course, when you file a new Indictment, it's
21 always assigned to a specific judge. And when that firearm
22 Indictment is filed against Mr. Reed, it's assigned to Judge
23 Daniel Hovland. Judge Hovland is the other permanent federal
24 judge that services North Dakota. The prosecutor listed on the
25 Indictment -- the firearm Indictment against Mr. Reed is a man

1 named Lynn Jordheim, and he's the acting U.S. attorney or was
2 at the time for the District of North Dakota.

3 In fact, the Indictment was filed on September 24,
4 2009, and every time the Government files an Indictment, the
5 clerk of court's office assigns a file number to each
6 Indictment. And the file number assigned to Mr. Reed's firearm
7 Indictment -- it's kind of important in this case, and that
8 number is right here, 09-0076-DLH, and if you're not getting
9 all the names or numbers down, don't worry about it. You're
10 going to hear about it during the trial, ladies and gentlemen.

11 But the number may look long, but it's not very
12 complicated. The 09 means the year the case was filed, 2009.
13 The 76 means it was the 76th case filed that year. On
14 January 1st, the first case will be case number 1, case number
15 2, and goes all the way through the year. Beginning of the
16 next year you're back to case number one. And the DLH stands
17 for the judge's initials, Daniel L. Hovland. The J. Hovland
18 and J. Erickson, this is for Judge Hovland and Judge Erickson.

19 So anyway, they file this Indictment against Mr. Reed
20 with that number from the clerk's office being assigned the
21 case. Now, Mr. Reed is now in jail at this time, and
22 Mr. Davis, the co-defendant, is not in jail. And Mr. Reed and
23 Mr. Davis, while Reed is in jail and Davis is not, they have a
24 number of meetings. Mr. Davis comes down to the jail and he
25 sees Mr. Reed a number of times. They talk on the telephone a

1 number of times. While Mr. Reed is in jail, he calls Mr. Davis
2 a number of times.

3 And, ladies and gentlemen, every time an inmate calls
4 someone from the jail, that call is recorded or monitored. The
12:02 5 inmate is told upon arrival to the jail the calls here are
6 going to be recorded. When an inmate picks up the phone, the
7 first thing they hear is a recorded message saying this call is
8 being recorded, so it's no secret that they're recording the
9 calls. And Mr. Reed and Mr. Davis, while Reed is in jail, are
12:02 10 talking about their plan to try and intimidate or interfere
11 with this Judge Hovland and this Prosecutor Jordheim.

12 What these two men decide to do, they make plans to
13 file and eventually do file a \$3-and-a-half million lien or
14 Financing Statement against the federal judge assigned to
12:03 15 Mr. Reed's case and the U.S. attorney who's listed on the
16 Indictment, Lynn Jordheim. They file what's called a Financing
17 Statement or a lien. It's under the Uniform Commercial Code.
18 These two men get together and they talk about this, and they
19 decide that's what they're going to do.

12:03 20 When Mr. Reed is in jail, he talks about this with
21 Mr. Davis on some of these recorded conversations. They don't
22 come right out and discuss it in full. They talk in kind of a
23 code, but they do mention filing the lien. They do mention
24 filing it right after the holidays. They do mention the UCC
12:03 25 Financing Statement, and a number of times they talk about the

12:04 1 amount that they're going to ask for, that they've decided to
2 ask for \$2.4 million in cash and \$1 million in silver. Where
3 they get the 2.4 million dollars cash and the 1 million
4 dollars in silver, I have no idea, but that's the amount and
5 the -- what they ask for. That's essentially what they want
6 when they file this lien.

7 And that takes us to the 2010, ladies and gentlemen.
8 On January 5th of 2010, Judge Hovland, the judge presiding over
9 Mr. Reed's firearm case, issues an order on Mr. Reed's case.
12:04 10 Mr. Reed had made a motion to dismiss the firearm Indictment
11 against him, and on January 5th Judge Hovland cuts a written
12 order. He signs an order saying your motion is denied. You
13 will stand trial on this case.

14 The very day after Judge Hovland signs the order that
12:04 15 the case is not going to be dismissed and Mr. Reed is going to
16 have -- is going to stand trial, Mr. Davis, at Mr. Reed's
17 urging, files the \$3-and-a-half million lien against Judge
18 Hovland and against Lynn Jordheim. The day after the motion to
19 dismiss was denied, he files this at Mr. Reed's urging, and he
12:05 20 files it with an agency in Washington, DC, called the
21 Washington, DC, Recorder of Deeds Office. This is a lien that
22 Mr. Davis files electronically. You can file it over your
23 computer if you have internet access.

12:05 24 The Washington, DC, Recorder of Deeds Office, ladies
25 and gentlemen -- and there will be a person here from that

1 office to testify about this -- is an office of what we call
2 default jurisdiction. Essentially just about anybody can file
3 a lien, and it's just about anybody in the United States, if
4 you go through this office. Mr. Davis files this lien at
5 10 o'clock at night, at 10:01 p.m., and he files it
6 electronically. All you've got to do is pay the filing fee of
7 \$41, which you can pay with your credit card, and that lien is
8 filed against the debtors you're trying to put a lien on.

9 And when the agency in Washington, DC, docket this
10 lien or this Financing Statement against the judge and the
11 prosecutor, they also have a separate number, a docket number,
12 which is somewhat important in this case. And that number is
13 way down there at the bottom, and it's 2010-1134. And again,
14 the 2010 is the year, the year it was filed. The 1134 means
15 this is the 1,134th lien filed during the year. That's the
16 docket number the court assigns to the case.

17 But this agency has a very unusual policy of pretty
18 much filing liens against people as long as you go ahead and
19 pay the filing fee and docket it. But Mr. Davis, at Mr. Reed's
20 urging, files this lien. Mr. Davis files it under his own
21 name, Gregory Davis. He sends the acknowledgment under Gregory
22 Davis. He lists as debtors Judge Hovland, a federal district
23 court judge as the debtor in the case, and he lists Lynn
24 Jordheim, the acting U.S. attorney. Mr. Davis asks for
25 \$2.4 million and \$1 million in silver, exactly as Mr. Reed and

1 he had talked about on the recorded phone conversation the
2 previous day.

3 And Mr. Davis writes in the lien the reason why he
4 and Reed believe they're entitled to \$3.4 million is for
5 default of Court Case 00076-DLH. In other words, Mr. Davis
6 writes in the Financing Statement that he files against the
7 judge and the prosecutor because they're involved in this case
8 against Mr. Reed. He believes that they owe them \$3.4 million.
9 And at this point, when Mr. Davis files this lien, Mr. Reed
10 hasn't even gone to trial yet. This case isn't even -- hasn't
11 even gone to trial yet, but yet they put this \$3-and-a-half
12 million lien on the judge and the assistant United States
13 attorney.

14 The law enforcement decides it's time to talk to
15 Mr. Davis. They've already talked to Mr. Reed, so they decide
16 it's time to talk to Mr. Davis. It's been a couple of weeks
17 after Mr. Davis has filed this lien, and he is approached by
18 Mr. Kellerman of the FBI. Mr. Kellerman calls Mr. Davis and
19 says I'd like an interview about this. Mr. Davis comes in and
20 he's interviewed at the sheriff's office. That interview of
21 Mr. Davis at the sheriff's office is recorded on video. It's
22 about a 45-minute videotape, and again, we will attempt to play
23 that for you at this -- at this trial.

24 And, ladies and gentlemen, when the defendant, Greg
25 Davis, is asked if he filed this \$3-and-a-half million lien

1 against the judge and against the prosecutor, he not only
2 admits it, he's very proud of it. He says, yes, I filed that
3 lien. They crossed the line, and I'm going to file more. I'm
4 going to file more liens if you guys keep stepping out of line.
12:08 5 He doesn't deny it at all. He's very proud of it and threatens
6 to file more against law enforcement and more judges.

7 Mr. Davis tells the FBI during the interview that any time you
8 arrest someone from the Little Shell Band, that's going to be
9 an instant lien. I'm going to put a lien on whoever is
12:08 10 involved in that case.

11 Mr. Davis during this interview goes on and on about
12 the Queen of England and bankruptcy law and things like that.
13 He calls Mr. Jordheim a legal lunatic, the prosecutor on the
14 case. They discuss this \$2.4 million figure and this
12:09 15 \$1 million in silver. And, ladies and gentlemen, when the FBI,
16 Agent Kellerman, says to Mr. Davis, sir, don't you know it's
17 against the law to put a lien on a federal judge and an
18 assistant U.S. attorney, when the FBI says that to the
19 Defendant Davis, Mr. Davis says to the FBI, and these are his
12:09 20 words, not mine, I think your law is ass wipe. But he never
21 denies during the course of that interview. He's very proud of
22 the fact that he filed these liens.

23 Okay. That takes us to April of 2010, and Mr. Reed's
24 case and the firearms case is moving through the system. And
12:09 25 Mr. Reed files some documents with the clerk of court's office

1 in his firearms case which further show the conspiracy between
2 him and Mr. Davis. Mr. Reed files in the clerk's office two
3 documents, which are basically pay-up documents, where is my
4 \$3-and-a-half million for that lien Mr. Davis and I put on you
5 gentlemen? But he files two documents three months after the
6 Financing Statement was filed. Mr. Reed puts in these
7 documents that he is entitled to the \$3.4 million. And in the
8 documents filed by Mr. Reed, he mentions the docket number of
9 the Financing Statement filed by Davis, the 2010-1134.

10 So, ladies and gentlemen, the evidence will show in
11 this case that both Mr. Reed and Mr. Davis, in separate
12 documents filed by each of them, reference numbers from court
13 cases of documents filed that they have no way of knowing
14 unless they were talking with each other, unless they were
15 involved with each other or had some association with each
16 other. But they each in separate filings cite docket numbers
17 from either court cases or Financing Statements.

18 And I'm just about finished here, ladies and
19 gentlemen. The last thing the evidence will show is that this
20 lien filed by Mr. Davis and Mr. Reed against Judge Hovland and
21 against Mr. Jordheim is basically still on the books. It's
22 still on record. These liens, the evidence will show, which
23 are very easy to file on someone, are very difficult to remove.
24 They can always be withdrawn by the person who filed them; that
25 is, the creditor in this case, Mr. Reed or Mr. Davis, but if

12:11

1 they're not withdrawn, it almost takes -- it takes a lawsuit to
2 get those liens off record. And there has been a lawsuit filed
3 by the U.S. Attorney's Office in an attempt to get those liens
4 off the record of Judge Hovland and off Mr. Jordheim. But the
5 evidence will show that the liens, so easy to place on someone,
6 are a lot of work and very difficult to get off record.

12:12

7 And so that's what the evidence will show in this
8 case, ladies and gentlemen. You have two men that are under
9 the mistaken belief that they or their friends cannot be
10 prosecuted in federal court, and as a result they try to
11 interfere with and do interfere with two federal judges and one
12 acting U.S. attorney. Thank you.

13 THE COURT: Thank you, Mr. Wright.

14 MR. WRIGHT: May I move this back, sir?

12:12

15 THE COURT: Yes, you may. Mr. Reed and Mr. Davis, if
16 you would take your place at the table again, please. Mr.
17 Reed, do you wish to make an opening statement at this time?

12:12

18 MR. REED: At this time I move the Court for us to go
19 to lunch. I would like to make opening statements right after
20 lunch, and then Mr. Davis will make his opening statement right
21 afterwards because I believe they should be made conjunctively.
22 I have at least an hour of an opening statement, and I don't
23 want to, you know, take up that long of a time past the lunch
24 period.

12:12

25 THE COURT: Well, that sounds reasonable. We'll take

1 a break. Let's start promptly at 1:15. Keep in mind that
2 you're not to discuss this case among yourselves or with anyone
3 else. And do not allow anyone to discuss the case or anyone
4 involved in the case with you, and do not form or express any
5 opinion on the case until it is finally submitted to you for
6 your verdicts. We'll see you back promptly. We'll try to
7 start at 1:15. The jury is excused. All rise.

8 (A lunch recess was taken from 12:13 p.m. to
9 1:19 p.m., the same day.)

10 THE COURT: Mr. Reed, you may make your opening
11 statement if you wish.

12 MR. REED: Thank you, Your Honor. Members of the
13 jury, ladies and gentlemen, my name is Boa-kaa-konan-na-
14 ishkaawaanden, Michael Howard Reed. Prosecuting attorney in
15 opening statement, he said that I made a phone call to Judge
16 Erickson in North Dakota, Grand Forks, as the Grand National
17 Council chief justice. I am a judge as myself, as Mr. Kornmann
18 sits on this bench. We're all federal employees. My official
19 title is I'm chief justice of the Grand National Council of
20 Confederated Nations as the creation of the Constitution that
21 we all live under. The Constitution -- when the Judge issued
22 his opening statement for you and he made the statement that it
23 was -- this court was under the Constitution, that would be a
24 contract. We must understand what a contract is and what -- -

25 MR. WRIGHT: Excuse me. Your Honor, we're going to

1 object. It's arguing the case.

2 THE COURT: It sounds like it is. Remember this is
3 not the closing argument. This is the time for --

4 MR. REED: Correct.

01:22 5 THE COURT: -- statements that --

6 MR. REED: Correct.

7 THE COURT: Don't interrupt when I'm talking. This
8 is the time for you to state what the evidence is going to
9 show, not to argue the case to the jury. Objection is thus
10 sustained. You may proceed, sir.

01:23

11 MR. REED: Also the prosecuting attorney has come
12 forth that I called to disrupt a case in Patrick Allery. Can I
13 bring forth the -- your board that you used on all of this,
14 Your Honor, for what he used to instruct the jury?

01:23 15 THE COURT: What do you wish to do?

16 MR. REED: I would like to remind the jury of exactly
17 how -- his flowchart and what he said in his opening
18 statements.

01:23

19 THE COURT: You're talking about what he had on the
20 blackboard?

21 MR. REED: Yeah, his blackboard.

22 THE COURT: Yes, you may use that.

23 MR. REED: Thank you. Can you see from here so we
24 don't have to move? Thank you. The prosecuting attorney -- I
01:24 25 was -- he has come forth -- and the defense will show in this

01:24 1 instant action that I represent native nations as a judge.
2 That's what I do for my living, just he does his job for the
3 United States. I do mine for the Grand National Council of
4 Confederated Nations and all native nation and indigenous
5 tribes on this land. That is my job. I was informed by the
6 Little Shell Nation, not band, not a tribe. They are a nation.
7 They're duly recognized under the acts of Congress. I will
8 prove in this case that they have a contract to be upheld by
9 the United States of America in this instant action.

01:24 10 I was informed to call on the behalf of the Little
11 Shell Nation for Patrick Allery in a case for Judge Erickson.
12 That happens all of the time in judicial comity between judges
13 of foreign nations. They call each other all the time. We
14 discuss things all the time. It's not out of the ordinary for
01:25 15 that to happen. The prosecuting attorney has said that I did
16 it out of anger. No, there's no anger. There's law. We all
17 have law that we have to live upon. The prosecuting attorney
18 has pointed out that the Little Shell Band and the Little Shell
19 people are a lawless society.

01:25 20 MR. WRIGHT: I'm going to object to that.

21 MR. REED: What he made in his opening statement.

22 MR. WRIGHT: Your Honor, excuse me. I'm going to --

23 MR. REED: That is not correct.

24 THE COURT: Mr. Reed, when he objects, you stop

01:25 25 talking.

1 MR. WRIGHT: That's a misstatement of my opening
2 statement. And again, he's arguing the case and not saying
3 what the evidence will show.

01:25 4 THE COURT: Sustained. The jury should disregard
5 that.

6 MR. REED: Okay. The evidence will show that the UCC
7 liens that were filed were filed pursuant to a contract. They
8 were not done fraudulently, as the plaintiff states. The
9 plaintiff always -- I mean, has -- excuse me, has also stated
01:26 10 in this case that -- official duties of the judge and judges
11 and juratis of the United States that were violated, that I
12 knowingly, willfully and intentionally violated those to swayed
13 the outcome of this -- of the Patrick Allery case, which I
14 would never do.

01:26 15 The evidence will show that I worked with the FBI
16 agents, Ryan O'Neil in this case, in the Patrick Allery case to
17 turn him over to the United States as comity, not as a fugitive
18 from justice of the United States because where we were at, we
19 were on Little Shell Nation land. We were not in the United
01:27 20 States of America. We were not in the state of North Dakota.
21 The evidence will show this.

22 The stuff that was -- he said that I was charged
23 being a fugitive from justice with a firearm, and it was in a
24 safe in an office that I owned. The office I did not own.
01:27 25 That was a foreign sovereign nation. They owned. That's their

1 safe. Was the firearm there? Yes, it was. It was there for
2 over two years. Did I have ways or means to get into that safe
3 to use the firearm? No, I did not. The evidence will prove
4 this.

01:27 5 He says that I filed fictitious liens, aiding and
6 abetting liens. The evidence will prove that I'm liened in
7 this same case, and I have to get my names removed off of the
8 same liens that are all on -- for everybody that says that he's
9 liened here. There's many judges. There's many attorneys.

01:28 10 There's many FBI agents on these liens. You have to look at
11 all names. I'm on there too. Why would I lien something
12 there? The evidence will prove why would I put myself on a
13 lien and have to pay it?

14 This case and the evidence will prove that the United
01:28 15 States is trying to run roughshod over a foreign sovereign
16 nation. The evidence will prove that this nation of the Little
17 Shell has foreign sovereign immunity under the Foreign
18 Sovereign Immunity Act of Congress. We don't have the right to
19 overrule Congress. They're the one that prescribes all the

01:28 20 laws for this land, for the United States of America. The
21 evidence will prove the Little Shell Nation is of their own.
22 They have a right for self-governance. They don't have a
23 right -- they have a right to choose for whatever violations in
24 their laws for their countries, just like the United States
01:29 25 does.

01:29 1 The evidence will also prove that I had nothing to do
2 with it. I asked questions about it. When you will see from
3 the prosecuting evidence that I asked questions. I didn't
4 coerce or do anything in that instant action of filing any
5 false or fictitious liens or even having -- having reason to
6 know why these liens are even being, because it's a foreign
7 sovereign nation. It's not about bringing mayhem or harm upon
8 anybody.

01:29 9 And the evidence will prove that you people sitting
10 here, you 12 people right now are going to have a chance of a
11 lifetime in history because the Little Shell Nation -- the
12 evidence will prove that the Little Shell Nation is a nation of
13 its own. It will prove that they have a right to self-
14 governance. They'll have a right to take care of their own
01:30 15 people. They have a right to do all of that. You're going to
16 be deciding their fate in this -- in this action, if they have
17 a right to do anything, and if there was a contract prior to
18 all these liens being filed. The evidence will prove that
19 there was.

01:30 20 The evidence will prove that you just don't go out
21 and fictitiously do anything of what the prosecution here
22 alleges today. The evidence will prove for the Little Shell
23 Nation, they have a right to do what they want to do as a
24 nation-to-nation status. The evidence will prove in this case
01:30 25 also that prior to this jury being sequestered and this date

1 coming forth, that the Court violated the laws prescribed for
2 them. I don't think that's too good of a thing.

3 THE COURT: Sir, don't argue law to the jury. I will
4 tell the jury what the law is, not you or Mr. Wright.

01:31

5 MR. REED: The evidence will also prove what
6 everybody's duty is and what an official duty is supposed to be
7 and how they're supposed to be upheld. The prosecution in his
8 opening statement has made the Little Shell people, the Little
9 Shell Nation look like they're a bunch of renegades.

01:31

10 MR. WRIGHT: Your Honor, I object to this. The
11 Little Shell Nation is not on trial here, as you instruct --

12 MR. REED: Yes, it is.

13 THE COURT: Sir, don't interrupt when he's stating.
14 Go ahead. State your objection, Mr. Wright.

01:31

15 MR. WRIGHT: As you instructed the jury before we
16 started, the only two people on trial here are the defendants,
17 and they're on trial for what's charged in the Indictment. We
18 object to him trying to put the Little Shell Band or Little
19 Shell Nation on trial and attempting to intimidate the jury in
20 something that's got nothing to do with the case.

01:32

21 THE COURT: Sustained. The jury should not pay any
22 attention to that.

23 MR. REED: During -- through the course of this trial
24 you will learn, the evidence will prove of how the rights of me
25 and Zakiz-aanakwad, the chief of the Little Shell Nation, has

01:32

1 viatated (sic), not only viatated, but violated and is void.
2 The evidence will also prove in this case, that I will present,
3 that nothing has been done fraudulently. Nothing has been done
4 fictitiously. Nothing has been done under threat, duress or
01:32 5 coercion of any outcome of any official proceeding or pleading.

6 I will produce the evidence, and the evidence will
7 show by -- by the Federal Bureau of Investigations, Ryan
8 O'Neil. He will be in this case and he will be one of the
9 witnesses, and he will also state that I worked with him to
01:33 10 turn over somebody to get this case of Patrick Allery handled,
11 the case that they brought after this happened. Then that's
12 when they brought that other case against me, which was
13 possession of a firearm while being a fugitive from justice.
14 That's the very next case that happened from that.

01:33 15 Then from that case of the outcome is the Little
16 Shell Nation, of me being one of their employees. They protect
17 their employees, just like the United States protects their FBI
18 and their judges and their marshals. The Little Shell Nation
19 doesn't have a big pocketbook. They don't have a pocketbook
01:34 20 for somebody to run around and do all those things. The
21 evidence will prove that, but the evidence will prove that the
22 Little Shells have a right to protect their people.

23 And if the Little Shells and the chief, Gregory
24 Davis, Zakiz-aanakwad, decides and the council of the Little
01:34 25 Shell decide to do something, that is their God-given right.

01:34

1 They don't -- they have a right to do what they have, to
2 self-govern, to take care of their people. The evidence will
3 also show that there is law for the Little Shells, a higher law
4 and a higher standard of law than what the prosecuting will
5 even admit to. They've been -- I won't make that statement.
6 Sorry.

01:35

7 There's so much evidence in this case, and I can only
8 ask you for when all the evidence is brought forth, to look at
9 it, to weigh it for what has been done, if it's been done as
10 they allege it has been done. They have to prove that it was
11 done falsely. They have to prove that it was done
12 fraudulently.

13 MR. WRIGHT: Excuse me. I object. Again, he's
14 arguing the case.

01:35

15 THE COURT: Yes, Mr. Reed, stick to what your
16 evidence is going to show. Don't argue the case at this
17 juncture.

01:35

18 MR. REED: That's what I say, the evidence is going
19 to prove this, so without any -- the evidence will even prove
20 that I had nothing to do with filing the \$2.4 million. The
21 evidence will prove that I didn't file any of that. My name --
22 the evidence will prove that my name is on none of it. I've
23 had nothing to do with it. The evidence will prove in this
24 case that I was acting with judicial comity when I made the
25 phone calls to the FBI, when I made the phone call to Judge

01:36

1 Erickson. I did it in an official capacity, official capacity
2 only. I did not do it in any other way. I did it in complete
3 honor. That's what the evidence will prove, and I rest.

01:36 4 THE COURT: Thank you, sir. Mr. Davis, do you wish
5 to make an opening statement at this time or reserve that?

6 MR. DAVIS: I'll be brief. I'm not long-winded.

7 THE COURT: Okay. Go ahead, sir.

8 MR. DAVIS: They can argue that. I don't need this.
9 Okay. Ladies and gentlemen of the jury, I am Zakiz-aanakwad.

01:36 10 I am chosen by my people to be their spokesperson. That's just
11 like you guys say chief. My job is to protect anybody that we
12 claim, and I do so, and basically that's what brought us here.
13 I protect everything we claim sovereign. I filed that lien.
14 Nobody tells me how. Nobody tells me when. Nobody tells me
01:37 15 where. I made that decision. So I got you here, not him.
16 That's it. Now we go to trial and we will prove this. There's
17 no -- I am the agent of my people, and that's it, nobody else,
18 not him, not him, not her, not him, not him (indicating). Me,
19 that's it.

01:38 20 I will prove to you I have the right to do that. And
21 I'll prove to you I even protected all of these officials on
22 the U.S. side because there's a trustee and a trust position
23 when dealing with Native Americans, and we will bring that out,
24 and we will show where I did not violate that. And there are
01:38 25 contracts there, existing contracts and duties that they must

1 follow as agents, fiduciary agents to us. We own the land, and
2 I will prove that, and that's my innocence. That's my
3 God-given right.

01:39 4 THE COURT: All right. Thank you, Mr. Davis. Mr.
5 Wright, you may call your first witness.

6 MR. WRIGHT: Chris Myers.

7 CHRISTOPHER MYERS,

8 having been first duly sworn, was examined and testified as
9 follows:

01:39 10 MR. WRIGHT: Your Honor, pursuant to your earlier
11 directive, may I remain seated while I examine the witness?

12 THE COURT: Yes, you may.

13 DIRECT EXAMINATION

14 BY MR. WRIGHT:

01:39 15 Q. Sir, would you state your name, please?

16 A. Chris Myers, M-Y-E-R-S.

17 Q. What's your occupation?

18 A. I'm an assistant United States attorney here in the
19 District of North Dakota.

01:40 20 Q. And how long have you been with the U.S. Attorney's Office
21 in North Dakota?

22 A. I've been with the office about eight-and-a-half years.

23 Q. And what are your standard duties?

01:40 24 A. I am what's termed the OCDETF prosecutor, which is
25 organized crime, drug enforcement task force prosecutor.

1 Essentially what that is is I prosecute large-scale federal
2 drug trafficking cases.

3 Q. And prior to joining the U.S. Attorney's Office, did you
4 have any other prosecution experience?

01:40

5 A. I did. I was the chief assistant Clay County attorney in
6 Moorhead, Minnesota, for approximately four years, and prior to
7 that I was an assistant Cass County states attorney in Fargo.

8 Q. And are you a full-time assistant United States attorney?

9 A. I am.

01:40

10 Q. Do you have any like private practice or anything on the
11 side?

12 A. No.

13 Q. And is that typical of most assistant United States
14 attorneys, that they're full-time?

01:40

15 A. It is.

16 Q. All right. Let's talk a little bit about narcotics or
17 drug offenses, sir. Does a narcotics or drug offense sometimes
18 violate more than one set of laws?

19 A. It does. It can violate federal law, state law, and
20 tribal law.

01:41

21 Q. And how is it determined where an individual gets
22 prosecuted, either in federal court or state court?

23 A. Well, a lot of factors come into play when making those
24 decisions. There's a lot of collaboration between federal,
25 state, and local officials to determine which venue is best to

01:41

1 prosecute the particular drug offense, and so those factors
2 weigh in. And the size of the organization, the type of drugs,
3 the sophistication of the organization, all those things factor
4 into those decisions.

01:41

5 Q. And can one particular case have more than one player or a
6 large number of defendants?

7 A. Yes, they can, typically, especially the cases we
8 prosecute in federal court, have a number of defendants
9 involved in these -- in these conspiracies.

01:41

10 Q. And typically on a large-scale conspiracy, is it common to
11 have all the defendants listed on one Indictment?

12 A. Yeah, it is common to have multiple defendants listed on
13 one Indictment. Sometimes there's multiple indictments with
14 multiple defendants. It just really depends on when the case
15 is presented to the grand jury for indictment, the stage of the
16 investigation, and those factors that make that determination.

01:42

17 Q. And are most federal cases started by indictments, sir?

18 A. They are.

19 Q. All right. Let me ask you about November 6th of 2008.

01:42

20 Did you ask for and secure a federal Indictment against a
21 number of listed individuals?

22 A. I did.

23 Q. And were those for all violations of federal narcotics
24 laws?

01:42

25 A. They were.

1 Q. In fact, 17 different individuals?

2 A. That's correct.

3 Q. Were they charged in the same Indictment?

4 A. Yes.

01:42

5 Q. And again, is that typical?

6 A. That is typical.

7 Q. All right. Do you know if one or more of those
8 individuals were somehow connected with or members of the
9 Little Shell Nation or Little Shell Band?

01:43

10 A. I did learn that after the case was presented for
11 indictment.

12 Q. And do you know the names of those two individuals?

13 A. Patrick Allery and John Lenoir.

01:43

14 Q. Was the fact that either one of those individuals had some
15 connection with Little Shell, did that go into your decision to
16 bring charges against them?

17 A. No.

18 Q. In fact, did you even know about that when you prepared
19 the Indictment?

01:43

20 A. No.

21 Q. All right. And in your work on that case, do you know if
22 Mr. Patrick Allery goes by any different names?

23 A. I came to learn that he went by the nickname Neegee,
24 N-I-G-I (sic).

01:43

25 MR. WRIGHT: May I approach, sir?

1 THE COURT: Yes.

2 THE WITNESS: He also went by another nickname as
3 well.

01:43 4 Q. (MR. WRIGHT CONTINUING) Mr. Myers, I placed at the bench
5 what's been marked as Government's Exhibit Number 1 and
6 Government's Exhibit Number 2. Can you look at Number 1,
7 please, and hold that in your hand? Do you recognize that,
8 sir?

9 A. I do.

01:44 10 Q. And what is that, please?

11 A. This is -- Exhibit Number 1 is the Indictment that I
12 prepared and presented to the grand jury in November of 2008.

13 Q. And is that document a certified copy of the 17-defendant
14 Indictment that you prepared?

01:44 15 A. It is, yes.

16 Q. And does that contain Mr. Allery and Mr. Lenoir's name on
17 that document?

18 A. Yes, it does.

01:44 19 Q. Using this highlighter, please, could you please highlight
20 Mr. Lenoir and Mr. Allery's name on Exhibit 1 on the first
21 page, please?

22 A. (Drawing.)

23 MR. WRIGHT: At this point we would offer Exhibit
24 Number 1, Your Honor.

01:44 25 THE COURT: Any objection from the defense?

1 MR. REED: No objection.

2 MR. DAVIS: No.

3 THE COURT: That exhibit may be admitted.

4 MR. WRIGHT: Your Honor, may I publish this to the
5 jury while I continue?

6 THE COURT: Yes, you may.

7 Q. (MR. WRIGHT CONTINUING) Okay. Mr. Myers, if you get an
8 indictment on the defendant, what's the next step? How do you
9 get them into court then?

10 A. Well, after the grand jury considers the proposed
11 Indictment and determines there's probable cause for those
12 charges, typically what happens is the Indictment is processed
13 through the Clerk of Court's Office. A warrant is issued for
14 each defendant, and then the law enforcement agencies that are
15 involved in the investigation, along with the U.S. marshals,
16 seek to execute those arrest warrants and bring each of the
17 defendants listed in the Indictment into custody. Once they're
18 in custody, they make an initial appearance before a federal
19 magistrate, at which time the federal magistrate advises each
20 of the defendants of the nature of charges, their rights. And
21 typically a detention hearing is held at the initial
22 appearance, at least in this district.

23 Q. And once they've gotten through that process, is their
24 case eventually assigned to a specific United States District
25 Court judge?

1 A. Yes, usually at the time of the arraignment, a district
2 judge is assigned to the Indictment.

3 Q. And does the -- does your office -- does the U.S.
4 Attorney's Office have any say on which particular judge gets
5 assigned to which case?

6 A. We do not.

7 Q. All right. And does that judge that's assigned generally
8 handle the balance of the case then?

9 A. Yes.

10 Q. Now let's talk a little bit about the Clerk of Court's
11 role in this case. Do they prepare a clerk's file on every
12 Indictment?

13 A. They do.

14 Q. Do they assign a file number to the Indictment?

15 A. Yes, they do.

16 Q. And do they also prepared what's called a docket sheet?

17 A. Yes.

18 Q. And can you explain what that is, please?

19 A. A docket sheet is maintained, at least now,
20 electronically, and each time there's an occurrence or an event
21 that happens in court or a document is filed under that
22 particular file number, the clerk's office is charged with
23 entering that into what's called the docket or the formal
24 record of that particular proceeding.

25 Q. And does the docket sheet generally reflect the name of

1 the defendant and the judge that it's assigned to?

2 A. It does.

3 Q. And I handed you earlier Government's Exhibit Number 2,
4 which is in front of you, sir. Can you identify that?

01:47

5 A. Yes, Exhibit Number 2 is a certified copy of the criminal
6 docket sheet, at least the front cover of the docket sheet for
7 a defendant, Patrick Lee Allery.

8 Q. And can I assume each defendant would have a separate
9 docket sheet on a multi-defendant indictment?

01:47

10 A. Yes.

11 Q. All right. And does the docket sheet marked Exhibit
12 Number 2, does that reflect which judge was assigned to that
13 case?

14 A. That was assigned to Judge Ralph Erickson.

01:47

15 Q. And is that contained on the docket sheet?

16 A. It is.

17 Q. Would you please take the highlighter and highlight that
18 part of it, sir?

19 A. (Drawing.)

01:48

20 MR. WRIGHT: At this point we would offer Exhibit 2,
21 Your Honor.

22 THE COURT: Any objection?

23 MR. DAVIS: No objections.

24 MR. REED: No objection.

01:48

25 THE COURT: Exhibit 2 may be admitted.

1 MR. WRIGHT: And, sir, may I publish while I
2 continue?

3 THE COURT: You may.

4 Q. (MR. WRIGHT CONTINUING) Mr. Myers, do you recall, was
5 Mr. Allery, Patrick Allery, assigned an attorney --

6 A. He was.

7 Q. -- for his defense?

8 A. Yes.

9 Q. And again, that would be typical of -- every defendant
10 would be assigned an attorney, is that correct?

11 A. Yes.

12 Q. Do you know either of the defendants in this case,
13 Mr. Reed or Mr. Davis?

14 A. I don't know them.

15 Q. Well, were either of them either Mr. Allery's attorney or
16 Mr. Lenoir's attorney in your case that you had?

17 A. No, they were not. Mr. Allery was represented by Jason
18 Vendsel out of Minot, and I believe John Lenoir was represented
19 by Troy Morley. I believe he's out of Grand Forks.

20 Q. Now, in March of 2009, was there any significant event
21 that happened in Mr. Allery's case that you can recall?

22 A. Yeah, I believe it was about March 5th of 2009, Judge
23 Erickson issued a warrant for the arrest of Mr. Allery.

24 Q. And do you recall why?

25 A. As I recall, it was issued at a status conference, an

01:49 1 in-chambers status conference. And coupled with that
2 particular status conference was a motion to withdraw from
3 Mr. Vendsel because he had had trouble maintaining contact with
4 Mr. Allery. In any event, Judge Erickson issued what's called
5 a bench warrant at that time.

6 Q. So was there a warrant issued for Mr. Allery's arrest
7 then?

8 A. Yes.

01:49 9 Q. And to the best of your knowledge, was that warrant still
10 active in May and June of 2009?

11 A. Yes, I believe that Mr. Allery was arrested on or about
12 June 10th of 2010.

13 Q. 2009, actually?

14 A. Excuse me. Yes, 2009.

01:50 15 Q. So on May 5th would he still have been on fugitive status?

16 A. Yes.

17 Q. And on June 8th?

18 A. Correct.

01:50 19 Q. And, sir, did Mr. Allery's case eventually wind its way or
20 end up through the system?

21 A. Yes, ultimately Mr. Allery, not long after his appearance
22 on the warrant, entered a guilty plea.

23 Q. All right. And the fact that it took from November of
24 2008 through June of 2009, is that particularly unusual?

01:50 25 A. No, it's not.

1 Q. And did you become aware of a call allegedly made by
2 Mr. Reed to Judge Ralph Erickson involving this case?

3 A. Yes, I became aware of that call.

4 Q. In fact, do you know if all 17 attorneys on this
5 particular case were sent a copy of that actual voice mail?

6 A. I believe, as I recall, the day or the morning after Judge
7 Erickson's chambers received this particular call, we, meaning
8 myself and the assigned counsel to the other remaining
9 defendants -- and I can't say it was all 17 because some of the
10 17 defendants may have pled out prior to, so I'm not sure
11 exactly who all got the e-mail, but I recall getting a copy of
12 the audio call the next day, or so.

13 MR. WRIGHT: Very good. That's all the questions I
14 have, sir.

15 THE COURT: Any cross-examination of this witness?

16 MR. REED: Yes.

17 THE COURT: Okay. Go ahead.

18 CROSS-EXAMINATION

19 BY MR. REED:

20 Q. It's nice to meet you.

21 A. Nice to meet you, sir.

22 Q. I've got a question when it says when -- to get this -- a
23 defendant into court, prior to anything, did you know that
24 Neegee, Mr. Allery, was he Native? Did you realize that?

25 A. I believed prior to Indictment I was aware that Mr. Allery

1 was involved in drug trafficking up on the Turtle Mountain
2 Indian Reservation, and I don't know if I knew for sure whether
3 he was Native American or not at that time.

01:52 4 Q. Did you take the steps in going through foreign diplomatic
5 relations, as you're supposed to do for extradition -- for
6 foreign extradition at that time?

7 MR. WRIGHT: Excuse me. I would object to the form
8 of that question.

01:52 9 THE COURT: Sustained. The jury should disregard
10 that. That's not the law.

11 Q. (MR. REED CONTINUING) Did you do any background checks or
12 anything on Mr. Allery?

01:52 13 A. I didn't personally. Typically what happens, and I
14 believe it's what happened in this case, is the agents would
15 run a criminal history check and also verify the identity of
16 each of the people that we're presenting a case before a grand
17 jury for indictment, and I believe that was done in this case
18 for each of the defendants.

01:53 19 Q. So there's an investigation, and they investigate whether
20 or not he's a United States citizen or not?

01:53 21 A. Well, I don't know that they necessarily investigate
22 whether they're a United States citizen specifically, as this
23 case is a -- was a drug trafficking case, so I don't know if
24 they investigated his citizenship or not. Since it's a drug
25 trafficking case, they may not have determined his citizenship.

1 I'm not sure of that.

2 Q. As a prosecuting attorney, what is the standard procedure,
3 operating procedure for the comity between the United States
4 and a tribe when -- you know, if there's any issues towards the
5 foreign nation of a tribe? And on a reservation, isn't there
6 an interstate compact agreement or anything like that for
7 comity?

8 A. well --

9 MR. WRIGHT: Object to the relevance of that, Your
10 Honor.

11 THE COURT: Sustained. There's no such requirement.
12 All of us who are in this country are subject to federal laws.

13 MR. REED: I object to that ruling.

14 THE COURT: Overruled.

15 Q. (MR. REED CONTINUING) Is it the United States -- is it
16 under your interpretation, that across all of the land for the
17 -- for Turtle Mountain, you have jurisdiction over Turtle
18 Mountain tribe?

19 MR. WRIGHT: Same objection, Your Honor. The Court
20 gives the law on that.

21 MR. REED: That's completely admissible under
22 Rule 802.

23 THE COURT: It isn't admissible unless I say it is,
24 but --

25 MR. REED: It has to go with foundation.

1 THE COURT: Is it his interpretation? I don't care
2 what his interpretation is. Sustained. I'll tell the jury
3 what the law is, not this witness or anybody else.

01:55 4 Q. (MR. REED CONTINUING) At his arraignment, did Patrick
5 Allery say anything that he was Native or -- and stand on any
6 rights or anything?

7 A. I don't recall. I don't even recall if I handled the
8 arraignment or not. It's not uncommon for another assistant to
9 handle various hearings, as you might expect, with the volume
01:55 10 of defendants.

11 Q. Who was the judge that appointed him counsel?

12 A. It was, I believe, either Judge Senechal or Judge Klein,
13 but I don't recall specifically who handled the initial
14 appearance. I know Mr. Allery, on the warrant where he
01:55 15 appeared in court in 2010, in June, he appeared in Bismarck,
16 and so Judge Miller would have handled that, but it's one of
17 the magistrate judges for this district that would have
18 appointed counsel.

19 Q. So at that time you were never informed that he was Native
01:56 20 or anything like that. You just looked at a name and assumed
21 that he was a citizen of the United States.

22 A. I don't recall what I was informed. As I said, I don't
23 know if I even handled the hearing.

24 Q. No. No. Let me rephrase that question. When you brought
01:56 25 forth the Indictment from -- in front of the grand jury, did

1 you assume that he was a citizen of the United States?

2 A. I assumed he was a citizen of the United States.

3 Q. Okay. Did you -- did you personally do your due diligence
4 and to find out exactly who this person was?

01:56

5 A. Yes. We consult with the investigators, review
6 investigative reports prior to presenting cases to the grand
7 jury for indictment.

8 Q. Okay. And when doing your due diligence and requesting
9 that report, investigation, who did your investigation and

01:56

10 report?

11 A. There was a number of agents assigned to this particular
12 investigation. This was a very expansive drug trafficking
13 organization that was involved in importing methamphetamine
14 from Mexico, up to Washington State, and over to the Turtle
15 Mountain Indian Reservation. And from Turtle Mountain, the

01:57

16 large quantities of methamphetamine were distributed to the
17 District of North Dakota, especially in the eastern side of the
18 state, and so there was a number of agents from the DEA task
19 force working on the investigation. FBI was assisting on the
20 investigation, and so there wasn't one specific agent assigned.
21 As you might expect when approaching these, the investigations
22 of large-scale drug trafficking organizations, it's a team
23 effort.

01:57

24 Q. Okay. With that team effort, who is -- who do you
25 personally contact when you do your first initial investigation

01:57

1 to do your due diligence? who is that person?

2 MR. WRIGHT: Object to the relevance, Your Honor.

3 THE COURT: Sustained.

01:58 4 Q. (MR. REED CONTINUING) Did you ever hear -- did you ever
5 get a phone call from me, Michael Howard Reed, in your office?

6 A. I don't believe so, no.

7 Q. Did you ever get a phone call from the chief of the Little
8 Shell Nation, Zakiz-aanakwad?

9 A. Not that I recall.

01:58 10 Q. what was the final outcome of this case?

11 A. All of the defendants or just Mr. Allery?

12 Q. Just Mr. Allery. Did he actually -- let me -- let me back
13 up a second. Sorry. How did he come about getting into
14 federal custody?

01:58 15 A. Well, he was arrested by, I believe, a federal law
16 enforcement agent and brought to Bismarck. I don't know which
17 agency. It could have been the marshals. I'm not sure.

18 Q. Do you know the circumstances under that arrest?

19 A. I don't.

01:59 20 Q. And what was the -- what was the final outcome for Patrick
21 Lee Allery in this case?

22 A. Mr. Allery was -- ultimately pled guilty and agreed to
23 cooperate with the United States in a subsequent prosecution of
24 that particular Indictment.

01:59 25 Q. what did he plead guilty to?

1 A. Misprision of a felony.

2 Q. That would be Title 18, Section 4, correct?

3 A. I think that's right.

4 MR. REED: Thank you. No further questions.

01:59

5 THE COURT: Any questions that you have, Mr. Davis?

6 MR. DAVIS: No, he answered them.

7 THE COURT: All right. Any redirect?

8 MR. WRIGHT: Just briefly, if I may.

9 THE COURT: Go ahead.

01:59

10 REDIRECT EXAMINATION

11 BY MR. WRIGHT:

12 Q. Mr. Myers, you were asked a couple of questions about the
13 race of Mr. Allery. When you're putting a case together and
14 decide to pursue an indictment, is race ever a factor for you
15 on a drug Indictment?

02:00

16 A. It is not.

17 Q. And why is that?

18 A. Race is irrelevant to whether somebody was involved in
19 trafficking drugs.

02:00

20 Q. Have you in your both state and federal career prosecuted
21 a number of different races, people of different races for drug
22 trafficking?

23 A. Yes.

02:00

24 Q. And Mr. Reed asked you about the scope of this case. You
25 said Mr. Allery eventually pled guilty to a misprision charge?

1 A. He did.

2 Q. Is that a felony in and of itself?

3 A. It is.

02:00 4 Q. And regarding the scope of this investigation, was this a
5 fairly large-scale methamphetamine operation?

6 A. It was. In the investigation it was determined that the
7 organization itself moved somewhere between 150 and 200 pounds
8 of methamphetamine during the course of this particular
9 conspiracy. There were a number of defendants, as we outlined
02:01 10 earlier, and it was a large -- a large conspiracy.

11 Q. In fact, did two of the defendants, not Mr. Allery or
12 Mr. Lenoir, but two other defendants, did they eventually get
13 life sentences on this?

14 A. Miguel Chavez ultimately was convicted after trial and
02:01 15 received life in prison. Miguel Zamudio similarly had a trial
16 and was convicted and received a life sentence. Those
17 individuals were essentially the sources of supply centered out
18 of Washington State that were involved in the conspiracy.

19 MR. WRIGHT: Thank you, sir. That's all.

02:01 20 THE COURT: Any other questions for you?

21 MR. REED: No, Your Honor, not at this time.

22 THE COURT: Mr. Davis?

23 MR. DAVIS: No.

24 THE COURT: All right. You may step down, sir.

02:01 25 THE WITNESS: Thank you.

1 THE COURT: Call your next witness.

2 MR. WRIGHT: Ladonne Vik.

3 THE CLERK: Please raise your right hand.

4 LADONNE VIK,

02:02

5 having been first duly sworn, was examined and testified as
6 follows:

7 DIRECT EXAMINATION

8 BY MR. WRIGHT:

9 Q. Would you state your name, please?

02:02

10 A. Ladonne Roland Vik, V-I-K.

11 Q. What is your occupation?

12 A. I'm a law clerk for Judge Ralph Erickson. He's the chief
13 judge of this district.

14 Q. And can you give us your education, please?

02:02

15 A. Yes, I graduated from Moorhead State in Moorhead,
16 Minnesota, with a BS, and I have a law degree from UND.

17 Q. And does each federal judge have one or more law clerks
18 that work for him or her?

19 A. I believe that's true.

02:02

20 Q. And how do you get to be a law clerk?

21 A. Well, I was asked by Judge Erickson to be his law clerk
22 when I was in private law practice.

23 Q. And can I assume each judge gets to pick their own clerks?

24 A. That's my understanding.

02:03

25 Q. And what are your standard duties as a law clerk, sir?

02:03 1 A. Well, I do a number of things. I administratively
2 schedule matters for the judge. I answer the telephone. I
3 help him with legal research. We have discussions about
4 pending cases. I supervise the other two lawyers that work in
5 our office that are also law clerks.

6 Q. And I don't know if I asked you, how long have you been
7 working for Judge Erickson?

8 A. I started with him in April of 2003.

9 Q. And does he have other law clerks too?

02:03 10 A. Yes, he does. We presently have three.

11 Q. And so would you be the -- what's called the senior law
12 clerk?

13 A. I suppose that's true. I've heard my job described as
14 administrative assistant also.

02:03 15 Q. To get a job as a law clerk, typically do the federal law
16 clerks have to do pretty well academically in law school?

17 A. Yes, we could hire -- we have enough applicants every year
18 that we could hire the number-one person in the class -- in a
19 law school class if that was our hiring criteria.

02:04 20 Q. And tell us a little bit about Judge Ralph Erickson, the
21 judge that you work for. Where are his chambers, if you know
22 how long he's been a judge, things like that?

23 A. Judge Erickson's chambers are at 655 First Avenue North,
24 Suite 410, in Fargo. He's been a federal judge since he was
02:04 25 appointed by President Bush in March of 2003. Prior to that he

02:04

1 was a state district court judge in the state of North Dakota,
2 and his chambers there, I believe, might technically have been
3 in Traill County, North Dakota, but because it's in the same
4 district as Cass County, he heard most of his cases and his
5 office was actually in Fargo.

6 Q. And is that a lifetime appointment?

02:05

7 A. His federal appointment is a lifetime appointment. His
8 state appointment was -- he actually ran for office. He was
9 never appointed by the governor, and so that's an elected
10 position.

11 Q. Let's just talk about his federal position for now.

12 A. Sure. Fair enough.

13 Q. Is that a lifetime appointment for him?

14 A. It's on good behavior, is my understanding.

02:05

15 Q. And is each federal judge given access to chambers?

16 A. Yes.

17 Q. All right. And what do we mean when we say "chambers"?

18 A. Well, it's a suite of offices in the federal courthouse in
19 Fargo, is the chambers I'm familiar with.

02:05

20 Q. And can I assume there's a telephone there?

21 A. That's true.

22 Q. And I assume there's voice mail on the telephone at the
23 judge's chambers?

24 A. That's correct.

02:05

25 Q. Who normally answers the phone during business hours?

02:05

1 A. I'd say it's most commonly me. We have several lines that
2 go to each individual person in chambers, so the judge has a
3 line. I have a line. The other law clerks each have a line,
4 and so if somebody calls in on that specific line, the call
5 would go to that person. But if it comes in on the 7080 line,
6 then it rings at my desk first, and if I don't get it in about
7 the first three rings, or so, somebody else answers it.

8 Q. All right. I'd like to talk to you about May 6 of 2009.
9 Do you recall that day?

02:06

10 A. I do.

11 Q. Did you go to work that day?

12 A. Yes, I did.

13 Q. Do you know if you were the first one in the Fargo
14 chambers of Judge Erickson?

02:06

15 A. You know, I'm not certain about it on that particular day,
16 but I would tell you that's usually the case.

17 Q. And when you get to work, do you recall what's the first
18 thing you normally do?

19 A. I make coffee.

02:06

20 Q. After that? You drink the coffee, right?

21 A. No, I don't even do that. I just get it started. After I
22 make coffee, then I check -- I fire up my computer to see if I
23 have received e-mails or so on. I check the phone to see if
24 there's any messages on the phone, and listen to the voice
25 mails that we received.

02:06

1 Q. And on May 6 of 2009, were there any messages you recall
2 being on the voice mail?

3 A. Yes, there were.

4 Q. Do you recall if any of those messages got your specific
5 attention more than any others?

6 A. Well --

7 MR. REED: Objection because he's leading the witness
8 to determine somebody's state of mind.

9 THE COURT: Overruled. He's simply trying to direct
10 his attention to one particular area. Overruled.

11 THE WITNESS: Most of the calls we get are common
12 sort of calls. This one was different than the rest.

13 Q. (MR. WRIGHT CONTINUING) Do you recall if the person left
14 his name on this particular one that we're talking about?

15 A. Yes.

16 Q. And what was the name that was left?

17 A. Michael Howard Reed.

18 Q. And what was the content of the message, if you recall?

19 A. It was kind of a rambling message. I recall it as
20 directing the judge to stop what he was doing in regard to a
21 case.

22 Q. After you listened to that message, what, if anything, did
23 you do?

24 A. Well, I made two telephone calls. We have a security
25 protocol, and I called the chief security deputy, U.S. marshal.

1 Q. Okay. Why?

2 A. Just because I was concerned with the tone on the message.

3 Q. Did you call anyone else?

4 A. I called Todd Dudgeon. He's our chief deputy clerk in
5 Fargo.

6 Q. Did you end up forwarding this voice mail message to
7 anyone, if you recall?

8 A. No, I don't think -- I don't think I did.

9 Q. All right. And the individuals that you talked to were
10 with what agencies?

11 A. The first gentleman would have been Jake Werner, but I
12 didn't actually talk to him. And I can't recall which deputy I
13 was directed to, but he just wasn't in the office, or I'm not
14 sure exactly what the reason was.

15 Q. And prior to testifying today, have you listened to
16 another copy of that voice mail?

17 A. Yes, I have.

18 Q. And again, this was the voice mail that came in to Judge
19 Erickson's chambers.

20 A. That's correct.

21 MR. WRIGHT: May I approach, sir?

22 THE COURT: You may.

23 Q. (MR. WRIGHT CONTINUING) Mr. Vik, I've handed you what's
24 been marked as Government's Exhibit Number 3. Is that, in
25 fact, a true and correct CD of the voice mail message that you

1 listened to on June of 2009?

2 A. I don't know.

3 Q. Well, did you listen to one in your --

4 A. I listened to one.

02:09

5 Q. All right. And when I had you listen to it, that was
6 after -- after June of 2009?

7 A. Oh, yes.

8 Q. It was about a month ago.

9 A. Right.

02:09

10 Q. And how long was it, do you recall?

11 A. I don't really remember.

12 Q. Half-hour, 45 minutes?

13 A. No, just a couple -- a minute or two.

14 Q. It's about a minute or two long.

02:09

15 A. Right.

16 Q. Now, you've worked for Judge Erickson for how long?

17 A. Seven years.

18 Q. And is it typical for him to get these kinds of messages?

19 A. No.

02:09

20 Q. In fact, are lawyers discouraged or precluded from even
21 talking to a judge about a case without the other lawyer being
22 there?

23 A. It's part of -- part of my job. I have to remind people
24 from time to time that the conversation should be made in open
25 court or in a meeting with all people that are concerned in

02:09

1 attendance.

2 Q. That's what's called ex parteing the judge?

3 A. That's correct.

4 Q. The day that Mr. Reed called on May 5 of 2009, do you know
5 if Judge Erickson was expecting a call from him?

6 A. I don't know.

7 Q. Did you ever make any calls at Judge Erickson's directive
8 to Mr. Reed prior to that call?

9 A. No.

10 Q. To your knowledge, had Judge Erickson ever called Mr. Reed
11 prior to that?

12 A. Not to my knowledge.

13 Q. Do you have any reason to believe that he did?

14 A. I think it would be highly unlikely.

15 MR. WRIGHT: Thank you. That's all.

16 CROSS-EXAMINATION

17 BY MR. REED:

18 Q. You say you checked the voice mails on that particular
19 day, and there was a voice mail left by me, Michael Howard
20 Reed, correct?

21 A. Well, I never met you until today, but I assume that's
22 correct.

23 Q. What exactly -- do you remember exactly what was said on
24 that voice mail when it first started? When you first played
25 it, what did it first say?

1 A. I don't have any idea.

2 Q. You don't have any idea?

3 A. No, I don't remember.

4 Q. You don't remember?

02:10

5 A. I'd recognize it if I heard it.

6 Q. Can a chief justice of the United States call another
7 chief justice?

8 MR. WRIGHT: We would object to that, Your Honor,
9 trying to give a statement on the law.

02:11

10 THE COURT: Overruled.

11 THE WITNESS: well, I don't know exactly what you're
12 asking me. There's only one chief justice of the United
13 States, but I think it would be fairly common for one district
14 court -- United States District Court judge to call another
15 United States District Court judge. It would be common for
16 that to happen.

02:11

17 Q. (MR. REED CONTINUING) Is it -- have you ever had in your
18 time of working there, received any calls from any judges
19 foreign, from a foreign nation?

02:11

20 A. No.

21 Q. You've never even had that even happen?

22 A. No.

23 Q. Have you ever received any calls from any judges on an
24 Indian tribe or on an Indian nation?

02:11

25 A. Yes.

1 Q. Is that a pretty common thing?

2 A. I'd say it's pretty rare. I can --

3 Q. Very rare?

4 A. I can only think of maybe an occasion or two.

02:11

5 Q. Like a handful of times?

6 A. Yes, less than that even probably.

7 Q. Yeah, they don't usually interact very much, do they?

8 A. Not very much.

9 Q. Okay. So you instructed the Marshal Service about this
10 phone call?

02:12

11 A. That's correct.

12 Q. Did you also instruct the newspaper and the TV stations
13 about this phone call?

14 A. No.

02:12

15 Q. Do you know who did?

16 A. I didn't even know they had been told about it.

17 MR. REED: Oh, okay. I have no further questions.

18 THE COURT: Mr. Davis, do you have any questions?

19 MR. DAVIS: No. No, he did very good.

02:12

20 THE COURT: Any other questions, Mr. Wright?

21 MR. WRIGHT: No, sir.

22 THE COURT: You may step down, sir.

23 THE WITNESS: May I be excused?

24 THE COURT: Any objection to him being excused?

02:12

25 MR. WRIGHT: None.

1 MR. REED: None.

2 THE WITNESS: Thank you.

3 THE COURT: You may be excused.

4 MR. WRIGHT: Ron Davies.

02:13 5 THE CLERK: Please raise your right hand.

6 RONALD J. DAVIES,

7 having been first duly sworn, was examined and testified as
8 follows:

9 DIRECT EXAMINATION

02:13 10 BY MR. WRIGHT:

11 Q. Would you state your name, please?

12 A. Ronald James Davies.

13 Q. And what's your occupation?

02:13 14 A. I'm the systems manager for the U.S. Probation and
15 Pretrial Services Office.

16 Q. And for how long?

17 A. I've been with the probation office for about five years.

18 Q. And just what is a systems manager?

02:13 19 A. I take care of all the computer networks, computers on
20 desktops, and the phone system for the district.

21 Q. And can you give us your education, please?

22 A. I have of a Bachelor of Science in computer science from
23 the University of North Dakota.

02:13 24 Q. And with your position, sir, would you be familiar with
25 the setup of Judge Erickson's chambers in Fargo, North Dakota?

1 A. Yes, I would.

2 Q. And can you just tell us a little bit about the voice mail
3 or the answering machine that's used there?

02:14 4 A. Yeah, the voice mail system for the district, it's --
5 there's one system for the entire district, so any time anybody
6 leaves a message, it's basically stored on one central server
7 that's located in Fargo.

8 Q. And in May of 2009, were you asked to retrieve and save a
9 voice mail message from Judge Erickson's chambers?

02:14 10 A. I was.

11 Q. And do you have any work experience in the area of doing
12 that?

13 A. Yes, I do.

14 Q. Tell us about that.

02:14 15 A. Yes, the system involved gives us multiple ways that we
16 can go in and listen to a voice mail message, one being
17 obviously through the phone that you would do normally with
18 your phones at home. Another one allows us -- and what we used
19 in this case is something called an IMAP connector, and IMAP is
02:14 20 just internet message access protocol. What it does is it lets
21 us copy or take a copy of the message and save it to your hard
22 drive or to a CD or a DVD.

23 Q. And is the message then eventually stored in what's called
24 a WAV file?

02:15 25 A. That's correct.

1 Q. On that particular date, May of 2009, do you recall how
2 you were notified to do this?

3 A. I received a call from chambers, and I don't recall
4 exactly the individual that made the call, but they asked us to
5 come up, that they had a message that they would like saved.

6 Q. Did they say why they wanted this message saved?

7 A. It was -- if I recall correctly, it was something to the
8 effect of it was a threatening voice mail.

9 Q. And technically every copy that's made of a WAV file, is
10 that just as good as an original?

11 A. Yes, essentially it is the original.

12 Q. And, sir, I'm going to hand you what's been marked as
13 Government's Exhibit Number 3. Have you listened to this prior
14 to testifying at trial?

15 A. Yes, I have.

16 Q. And is that a true and accurate original of the WAV file
17 voice mail that came to Judge Erickson's chambers in May of
18 2009?

19 A. Yes, it is.

20 MR. WRIGHT: We would offer Exhibit 3.

21 THE COURT: Any objection?

22 MR. REED: No objection.

23 MR. DAVIS: No.

24 THE COURT: Exhibit 3 may be admitted.

25 MR. WRIGHT: Your Honor, may we have the clerk

1 publish or play this for the jury at this time?

2 THE COURT: Yes, you may play it for the jury.

3 MR. WRIGHT: And I don't have any further questions
4 of Mr. Davies. I don't know if you want to do the cross now or
5 after it's played.

6 THE COURT: Well, go ahead and play it.

7 MR. WRIGHT: Yes, sir.

8 THE COURT: Do you have a transcript of that or not?

9 MR. WRIGHT: No, it's only like 45 seconds.

10 THE COURT: All right.

11 (Exhibit Number 3 is played in open court.)

12 MR. WRIGHT: No further questions.

13 CROSS-EXAMINATION

14 BY MR. REED:

15 Q. Is that the WAV file that you recorded?

16 A. It is.

17 Q. Did you -- were you instructed to do a phone search from
18 what phone it was sent to?

19 A. No, I was not.

20 Q. You were not asked. And do you normally do that on
21 occasion for phone calls left in judges' chambers when they
22 ask?

23 A. That's the only time I've been asked to do it in judges'
24 chambers.

25 Q. Okay. Did you inadvertently or mistakenly leave a disk or

1 anything laying around so it could be published in the
2 newspaper and on the news stations?

3 A. No.

4 Q. You did not?

5 A. No.

6 MR. REED: No more questions.

7 MR. DAVIS: None, sir.

8 THE COURT: All right. Any redirect?

9 MR. WRIGHT: Just if I may clarify.

10 THE COURT: Go ahead.

11 REDIRECT EXAMINATION

12 BY MR. WRIGHT:

13 Q. Sir, this is the only time you've ever been asked to make
14 a WAV file on a call coming into the judge's office?

15 A. Into the judge's office, correct.

16 MR. WRIGHT: Thank you. That's all.

17 THE COURT: You may step down. Do counsel have any
18 problem with this witness being excused?

19 MR. WRIGHT: No, Your Honor.

20 MR. REED: No.

21 THE COURT: All right. You may be excused, sir.
22 Call your next witness.

23 MR. WRIGHT: Ryan O'Neil.

24

25

1 RYAN O'NEIL,

2 having been first duly sworn, was examined and testified as
3 follows:

4 DIRECT EXAMINATION

02:20 5 BY MR. WRIGHT:

6 Q. Would you state your name, please?

7 A. Ryan O'Neil.

8 Q. And what's your occupation?

9 A. A special agent for the Federal Bureau of Investigation.

02:20 10 Q. Give us your educational background.

11 A. Bachelor's degree in criminal justice from the University
12 of Wyoming.

13 Q. And how long have you been an FBI agent?

14 A. Approximately four-and-a-half years.

02:20 15 Q. And does an FBI agent have to have a college degree?

16 A. Yes.

17 Q. And where are you currently stationed?

18 A. Boston, Massachusetts.

19 Q. And how long have you been stationed in Boston?

02:20 20 A. Little less than a year.

21 Q. Prior to going to Boston, where were you stationed?

22 A. I was stationed in Minot, North Dakota.

23 Q. And how long were you in Minot?

24 A. From the fall of 2006 to the fall of 2009.

02:20 25 Q. And what were your standard duties there, sir?

1 A. I primarily investigated violent crime and drug
2 trafficking on the Turtle Mountain Indian Reservation in
3 central -- northwest and central North Dakota.

02:21 4 Q. And the fact that you moved from North Dakota to Boston,
5 was that part of an FBI scheme on rotating agents?

6 A. Yes, it's a standard transfer policy.

7 Q. Can you explain that, please?

8 A. Typically an FBI agent is assigned to a relatively small
9 office, such as Minot, and you're there for three years. And
02:21 10 at that point you're transferred to one of several different
11 larger offices, which is what my transfer to Boston was.

12 MR. WRIGHT: Could I see Exhibit 1, please?

13 Q. (MR. WRIGHT CONTINUING) Mr. O'Neil, I'm going to show you
14 what's been received as Government's Exhibit Number 1. Did you
02:21 15 assist Mr. Myers in the investigation of that case?

16 A. Yes, I did.

17 Q. And the two highlighted defendants on there, Mr. Allery
18 and Mr. Lenoir, do you know if Mr. Allery goes by another name?

19 A. He also goes by Neegee, N-E-E-G-E-E.

02:22 20 Q. When you first started investigating that case or putting
21 it together for the U.S. Attorney's Office, did you know that
22 either one of those men were connected with the Little Shell
23 Nation or Band?

24 A. No, I did not.

02:22 25 Q. Did the fact that they may have had some connection to

1 Little Shell, did that have anything to do with your decision
2 to even pursue an indictment?

3 A. No, it did not.

02:22 4 Q. I want to talk to you about March of 2009. Do you
5 generally recall that time period?

6 A. Yes, sir, I do.

7 Q. Did the FBI receive an unsolicited fax at that time from a
8 person named Michael Howard Reed?

9 A. Yes, sir, we did.

02:22 10 Q. And were you expecting that fax?

11 A. No, sir.

12 Q. Did you know who Mr. Reed was at that time?

13 A. No, I didn't.

14 Q. What was the nature of that fax?

02:22 15 A. It was in reference to the Indictment that we just
16 discussed. It contained a series of statements that referenced
17 Mr. Allery and Mr. Lenoir's Indictment, that the U.S. District
18 Court didn't have jurisdiction to indict them. Mr. Allery at
19 the time was a fugitive on that Indictment, and there were
02:23 20 references to, they were aware of his fugitive status and there
21 was an order or statements in there ordering us to cease and
22 desist from trying to arrest Mr. Allery pursuant to that
23 Indictment.

02:23 24 Q. And based upon that fax that you received, did you stop
25 looking for Mr. Allery?

1 A. No, I didn't.

2 Q. And why is that?

3 A. I wasn't aware of any relevance that that fax would have
4 had to me carrying out my duties.

02:23

5 Q. And, in fact, did you have an arrest warrant from a
6 federal district court judge for Mr. Allery's arrest?

7 A. I did.

8 Q. All right. Now, sir, were you made aware of a voice mail
9 that was left on Judge Erickson's chambers in Fargo, North

02:23

10 Dakota?

11 A. Yes, I was.

12 Q. Did you do some brief investigation on that?

13 A. Yes.

14 Q. In the process of investigating that, did the FBI on

02:24

15 June 8th of 2009 receive a voice mail at your Minot office?

16 A. Yes, we did.

17 Q. Were you working in the office at that time?

18 A. Yes, I was.

19 Q. Are you familiar with the voice mail setup that they have
20 in that Minot office?

02:24

21 A. Yes, I am.

22 Q. Could you describe that, please?

23 A. It's a commercially available voice recording, digital
24 voice recording machine hooked to the office telephone, just

02:24

25 records messages in a digital format.

1 Q. On June 8 of 2009, did a message come in when you weren't
2 there?

3 A. Yes, it did.

4 Q. And did you eventually listen to that message?

02:24

5 A. Yes, I did.

6 Q. Did the caller identify himself or herself?

7 A. Yes, he did.

8 Q. And who was it?

9 A. Michael Howard Reed.

02:24

10 Q. Did the caller identify who the message was for?

11 A. Yes.

12 Q. And who did they say the message was for?

13 A. Myself.

02:24

14 Q. All right. Was there anything in that message
15 specifically that got your attention, sir?

16 A. The call -- the message was referencing Mr. Allery's
17 situation pending in U.S. District Court, and the caller made
18 the statement that if such and such didn't happen, the judge
19 was going to, quote, get the trigger pulled on him.

02:25

20 Q. Did that get your attention and concern?

21 A. Yes, it did.

22 Q. Why is that?

23 A. I considered it a threatening statement made towards a
24 federal judge.

02:25

25 Q. And having received and listened to that message, what did

1 you do?

2 A. Initially I notified the U.S. Marshal Service in Fargo and
3 in Bismarck, made arrangements to get them a copy of the
4 message. I notified my supervisors in the FBI, and notified
5 the U.S. Attorney's Office here and in Fargo.

6 Q. And why did you make all those notifications?

7 A. The U.S. Marshal Service I notified because they are
8 primarily responsible for the physical security of federal
9 judges, so I thought they needed to know about the threat.

10 Q. Did you have some concerns about the judge's safety?

11 A. Yes, I did.

12 Q. Did you attempt to save the voice mail or message that
13 came in?

14 A. Yes, I did.

15 Q. All right. Now, within a few days or a week, or so, after
16 that message came in, did -- was there an arrest made of
17 Mr. Reed?

18 A. Yes, there was.

19 Q. And is he one of the defendants in this case?

20 A. Yes, he is.

21 Q. Do you see him in the courtroom?

22 A. I do.

23 Q. And where is he at, please?

24 A. Seated at defense counsel table in the tan shirt and
25 eyeglasses.

1 Q. And did you do an interview with Mr. Reed on June 15th of
2 2009?

3 A. Yes, I did.

4 Q. And where was that at, sir?

02:26

5 A. It was at the -- at the time it was called the North
6 Central Correctional and Rehabilitation Center in Rugby, North
7 Dakota.

8 Q. And did he agree to be interviewed?

9 A. Yes, he did.

02:26

10 Q. And this man to my immediate left, is that the man you
11 know as Michael Howard Reed?

12 A. Yes, it is.

13 Q. All right. Now, before you interviewed Mr. Reed on that
14 date, did you advise him of his rights?

02:26

15 A. Yes, I did.

16 Q. Did you tell -- did you actually read them from a card?

17 A. I did.

18 Q. Can you tell us, please, what you advised him?

02:27

19 A. Yes. I'll read them from a similar card. He was advised,
20 quote, before we ask you any questions, you must understand
21 your rights. You have the right to remain silent. Anything
22 you say can be used against you in court. You have the right
23 to talk to a lawyer for advice before we ask you any questions.
24 You have the right to have a lawyer with you during the
25 questioning. If you cannot afford a lawyer, one will be

02:27

02:27

1 appointed for you before any questioning, if you wish. If you
2 decide to answer questions now without a lawyer present, you
3 have the right to stop answering at any time. And following
4 that it states, I've read this statement of my rights and I
5 understand what my rights are. At this time I'm willing to
6 answer questions without a lawyer present.

7 Q. And after you read all those to Mr. Reed, did he agree to
8 be interviewed?

9 A. Yes, he did.

02:27

10 Q. Do you routinely have individuals sign a written waiver
11 that they agree to be interviewed?

12 A. Yes, we do.

13 Q. Did Mr. Reed sign such a waiver?

14 A. Yes, he did.

02:27

15 Q. Did he make any comment that you recall about the legal
16 system?

17 A. He commented that he didn't recognize the legal system or
18 the authority of the FBI in general.

02:28

19 Q. All right. Now, Mr. O'Neil, did you specifically ask
20 Mr. Reed, this man to my immediate left, if he's the individual
21 that made the call to Judge Erickson's chambers on May 5 of
22 2009?

23 A. Yes, I did.

24 Q. And what did he say?

02:28

25 A. He admitted that he made the call.

1 Q. Now, regarding the call that came into the FBI office, at
2 your Minot office, did you ask Mr. Reed during this interview
3 if he's the individual that made the call to Minot?

4 A. Yes, I did.

02:28

5 Q. About the judge, about getting the trigger pulled on him?

6 A. Yes, I did.

7 Q. Did he admit to making that call?

8 A. Yes, he did.

02:29

9 MR. WRIGHT: May I have this marked as Number 4? I
10 thought it was marked.

11 Q. (MR. WRIGHT CONTINUING) Mr. O'Neil, I'm going to show you
12 what's been marked as Government's Exhibit 4 and 4a, ask you to
13 hold that in your hand and tell us if you know what that is.

02:29

14 A. The first item is Exhibit 4, is an FD-340 envelope, is the
15 technical name of it, filled out by myself dated June 8, 2009,
16 and the writing on the envelope indicates it contains the voice
17 mail left by Michael Howard Reed.

18 Q. And inside the envelope, is that the cassette tape from
19 your answering machine?

02:29

20 A. Yes, it is. This is the original.

21 Q. I think I put the exhibit tag on the cassette tape box.

22 A. It's on the case, correct.

23 Q. On the case. Okay. And what's 4a?

24 A. 4a is a copy of 4 in compact disk or digital format.

02:30

25 Q. So the FBI in Minot doesn't have the high tech. WAV file

1 yet that the judge's office has in Fargo. Is that what I'm
2 understanding?

3 A. You're absolutely correct.

4 Q. Okay. Is 4 and 4a essentially the same thing, a copy of
5 the recording of Mr. Reed's call?

6 A. Yes.

7 MR. WRIGHT: We offer Exhibit 4 and 4a at this time.

8 THE COURT: Any objection?

9 MR. REED: No objection.

10 MR. DAVIS: No.

11 THE COURT: None?

12 MR. DAVIS: None.

13 THE COURT: Exhibit 4a and -- 4 and 4a may be
14 admitted.

15 MR. WRIGHT: And may I have the clerk play 4a at this
16 time, sir?

17 THE COURT: Yes, you may play it.

18 (Exhibit 4a is played in open court.)

19 Q. (MR. WRIGHT CONTINUING) Mr. O'Neil, continuing with your
20 interview of Mr. Reed on June 5th of 2009, did Mr. Reed -- did
21 you ask Mr. Reed what his problem was with Mr. Erickson?

22 A. June 15th of 2009? Correction, you said the 5th.

23 Q. Okay. June 15th of 2009. Thank you, sir.

24 A. Yes, sir. Yes, we discussed specifically what his
25 problems were with Judge Erickson.

1 Q. What did Mr. Reed tell you?

2 A. He spoke at some length about, that Judge Erickson had a
3 problem with making laws from the bench, that he had failed to
4 and continued to fail -- or failed to follow his oath, and that
5 he had some prior experience not recognizing the Little Shell
6 Nation appropriately.

7 Q. And did Mr. Reed talk about that at some length?

8 A. Yes, sir.

9 Q. Did he make similar comments about your agency, the FBI?

10 A. Yes, he said we also didn't follow our oaths and failed to
11 properly administer justice.

12 Q. Did Mr. Reed make some comments to you about the O.K.
13 Corral?

14 A. Yes, at some point in the interview he indicated this
15 could all potentially be leading to an O.K. Corral type of
16 situation.

17 Q. And he mentioned showdown?

18 A. Yes, the showdown at the O.K. Corral.

19 Q. Now, the day after your interview, on June 16th of 2009,
20 did you do a search warrant at the headquarters of the Little
21 Shell Nation?

22 A. Yes, I did.

23 Q. And just -- I know we know what this is, but just
24 generally describe what a search warrant is.

25 A. A search warrant is a -- myself or a law enforcement

1 officer applies to a judge federally through an assistant U.S.
2 attorney and gets a -- physically gets a warrant, a document or
3 permission to search a particular location for particular
4 evidence of a crime, typically.

02:34

5 THE COURT: And that's to a magistrate judge, is it,
6 not to a U.S. district judge?

7 THE WITNESS: Yes, sir.

8 THE COURT: Thank you.

02:34

9 Q. (MR. WRIGHT CONTINUING) Did you get a search warrant in
10 this particular case?

11 A. Yes, we did.

12 Q. And what area were you going to search?

02:34

13 A. At a residence or a home in Rolette, North Dakota, which
14 we believed was the Little Shell Nation's offices or
15 headquarters.

16 Q. And did you find anything of significance?

17 A. Yes.

18 Q. What was that?

02:34

19 A. We recovered one nine millimeter handgun, one 15-round
20 magazine that was loaded, and several loose rounds of nine
21 millimeter ammunition.

22 Q. Where did you find that?

23 A. It was in a safe that was inside that residence.

24 Q. And was the magazine fully loaded?

02:35

25 A. Yes, it was.

1 Q. Now, the day after you did the search warrant, the next
2 day now, June 17th of 2009, did you re-interview Mr. Reed?

3 A. Yes, I did.

4 Q. And did you ask Mr. Reed about the gun that you found the
5 day before on the search warrant?

6 A. Yes, I did.

7 Q. Did he admit or deny that that was his gun?

8 A. He initially denied it was his, and then eventually
9 admitted it was his.

10 Q. And did he refer to it as "my gun"?

11 A. Yes.

12 MR. WRIGHT: Thank you. That's all.

13 CROSS-EXAMINATION

14 BY MR. REED:

15 Q. When you went and -- went to retain (sic) a search warrant
16 from the U.S. magistrate judge, Judge Charles Miller, what did
17 you swear under oath that you were going to be searching when
18 you initially came forth to get and obtain the search warrant?

19 A. The search warrant that was executed on June 16th was a
20 state search warrant, and I wasn't the affiant on that. I
21 participated in the search, but I didn't obtain the search
22 warrant, so I didn't swear to anything in that particular case.
23 That wasn't from Magistrate Miller.

24 Q. Okay. Then there's -- then you later searched the Little
25 Shell Nation. You learned later on that it was actually not my

1 residence, and you learned that it was the Little Shell
2 Nation's office, and you obtained a search warrant from Justice
3 Miller?

4 A. No, I did not.

02:36

5 Q. Who obtained the search warrant from Justice Miller?

6 A. I believe Special Agent Cody Patterson.

7 Q. Cody Patterson.

8 THE COURT: You don't mean Justice Miller. You mean
9 Judge Miller.

02:36

10 MR. REED: Yes.

11 THE COURT: You have to be on the Supreme Court to be
12 justice.

02:37

13 Q. (MR. REED CONTINUING) And the first time you've ever
14 heard of me was when I left a phone message for a judge in
15 Fargo because it was turned over to you then?

16 A. No, it would have been when the faxes and the various
17 documents started coming in to the U.S. Attorney's Office early
18 2009.

02:37

19 Q. Early 2009. So when I left the message on your phone
20 machine, I left it as an attorney general, correct?

21 MR. WRIGHT: Well, I'm going to object, Your Honor.
22 That's going to be speculation on this witness's part.

23 THE COURT: Overruled. You may answer.

02:37

24 Q. (MR. REED CONTINUING) On the recording of the telephone
25 call it states that it was Michael Howard Reed, attorney

1 general, correct?

2 A. Do you mind if I check my notes? I don't recall
3 specifically.

4 Q. Go right ahead.

02:37

5 A. I don't have those with me, but I think you're correct.
6 That's how you identified yourself.

7 Q. Okay. And what was the reason -- state why I called you?

8 A. My understanding --

02:38

9 MR. WRIGHT: Excuse me. I'm going to object to his
10 restating the reason. It would be a matter for the jury
11 ultimately to determine.

12 THE COURT: Well, yeah, the witness would not know
13 why the call was made, so in that -- the question is not --

02:38

14 Q. (MR. REED CONTINUING) On the phone message that was left
15 in your office, what was the reason for the phone message being
16 left?

17 MR. WRIGHT: Same objection, Your Honor.

18 THE COURT: Yeah, sustained. He wouldn't know what's
19 in the mind of the defendant.

02:38

20 Q. (MR. REED CONTINUING) Did you have any knowledge of me
21 being able to have access to that nine millimeter gun? Did I
22 have -- did I have the combination to that safe?

23 A. I don't know.

02:39

24 Q. Okay. When you arrested -- had Patrick Allery, Neegee,
25 arrested, when he was arrested, was it just a drive-by arrest

1 or was it arranged arrest?

2 A. I don't recall specifically, but I think he surrendered,
3 but I don't -- I didn't arrest him, so I don't know for sure.

4 Q. Was it me specifically talking with you that arranged that
5 arrest, to turn him in to the United States?

6 A. I know I requested that you do so. I asked you to assist
7 me in doing that, but I never was able to arrest him, so my
8 answer to that would be no.

9 Q. Did I assist you in arranging for his arrest?

10 A. No.

11 Q. No, I did not?

12 A. I didn't arrest him, nor did I effect his arrest, so I
13 didn't have any assistance in that process. We discussed it,
14 but I wasn't -- I never arrested him.

15 Q. So we never discussed a specific date for the Marshal
16 Service to be there to pick him up at the nation's headquarters
17 office?

18 A. Yes, we did.

19 Q. So that, in effect, is me and you were in contact with
20 each other about turning Patrick in and/or Neegee in to the
21 officials of the United States, is that correct?

22 A. Yes, we had discussions to that effect.

23 Q. So I did help turn him in, in effect, isn't that true?

24 A. I don't think I can remember enough to say definitively,
25 but I -- we certainly had discussions to that effect, and I

1 know that he surrendered.

2 Q. Okay. Does the FBI have jurisdiction over the Little
3 Shell Nation?

02:40 4 MR. WRIGHT: Excuse me. Can I object? The Court
5 will instruct on the law.

6 THE COURT: Sustained. Let's not have the witness
7 tell the jury what the law is. I'll tell you who has
8 jurisdiction.

02:41 9 Q. (MR. REED CONTINUING) You stated earlier that I had a
10 problem with United States laws?

11 A. I think I stated that you told me you didn't recognize
12 United States laws.

13 Q. I didn't recognize them?

14 A. Correct.

02:41 15 Q. Did you know the intent of the -- or any demeanor of
16 anything at any point in time?

17 MR. WRIGHT: Excuse me. I'm going to object to that.

18 THE COURT: Overruled.

19 MR. WRIGHT: I don't know what he's talking about.

02:41 20 THE COURT: It's up to the witness whether he knows
21 what he's talking about, not to the attorneys.

22 THE WITNESS: Can you repeat that, sir?

23 Q. (MR. REED CONTINUING) We'll strike it. On June 17th you
24 had an interview with me?

02:42 25 A. Correct, I did.

1 Q. And that was in Rugby?

2 A. Yes, sir.

3 Q. And what was the extent of that interview? What was --
4 what was all covered in that interview?

02:42

5 A. We discussed the search warrant that had occurred the day
6 prior, the firearm. Mr. Davis was present and a couple other
7 individuals were present. We discussed some of the other
8 materials that had previously been identified at the Little
9 Shell headquarters.

02:42

10 Q. Okay. You also made a statement that I said that there's
11 going to be a showdown at O.K. Corral?

12 A. Yes.

13 Q. What does that mean?

14 A. Do you want my --

02:42

15 Q. In your opinion?

16 A. -- opinion of what that means? I would take that to mean
17 that there's potentially going to be a violent confrontation of
18 some type.

02:43

19 Q. Really? Did we specifically discuss on June 17th about
20 the specific words that were used like "trigger" and "showdown"
21 and all of that?

22 A. We discussed those words specifically, yes.

23 Q. And what did you learn that was the original intent behind
24 those words?

02:43

25 A. Regarding when you -- your statement of pulling the

1 trigger on the judge, you told me at that point that you didn't
2 intend to hurt anybody and you meant that legally, something to
3 that effect.

02:44 4 Q. How many phone calls did you receive from the Little Shell
5 Nation and/or me, Michael Howard Reed, the attorney general for
6 the Little Shell Nation?

7 MR. WRIGHT: Object to the relevance, Your Honor.

8 THE COURT: Overruled.

02:44 9 THE WITNESS: I probably had half a dozen to a dozen
10 phone contacts with yourself or Mr. Davis. That's a rough
11 estimate.

12 Q. (MR. REED CONTINUING) At any point in time was there any
13 verbiage or any dialogue where it would say that I or anybody
14 of the Little Shell Nation would cause harm to anyone?

02:44 15 MR. WRIGHT: Your Honor, may we approach?

16 THE COURT: Well, no, I don't think so. What's your
17 objection?

18 MR. WRIGHT: It would be something I need the Court
19 to hear at the bench.

02:45 20 MR. DAVIS: Your Honor, what he's asking is, we had
21 dialogue back and forth, I and Ryan. I'm just waiting for him
22 to finish up what they're talking about, so I'm going to ask
23 him a few questions of mine. What -- what the co-defendant is
24 trying to get to here in these questions is very simple. Did
02:45 25 we threaten anybody in those phone calls?

1 THE COURT: Well, it isn't your turn yet, sir.

2 MR. DAVIS: We had many phone calls.

3 THE COURT: Well, it's up to the jury whether or not
4 this language used was threatening. What this witness thinks
5 doesn't really mean anything. You want to approach on the
6 record?

7 MR. WRIGHT: Yes, I do.

8 THE COURT: All right. You may approach. If you
9 want to stand up and stretch, ladies and gentlemen of the jury,
10 feel free to do so.

11 (At the Court bench, out of the hearing of the jury.)

12 MR. WRIGHT: Mr. Reed keeps asking the witness about
13 other parts of this conversation and whether any violence was
14 discussed. And if this guy has to answer, he's going to say,
15 yes, a long conversation with Mr. Reed, who made a threat to
16 blow up the jail. And he also made comments that he wants to
17 get some bullets and kill some cops with them.

18 MR. REED: Which is all inadmissible under Rule 701.

19 MR. WRIGHT: If they want to go into that, if they
20 want to talk about what was said, I'm certainly going to get
21 the chance to say, "What did you talk about?"

22 MR. REED: I'm sorry?

23 MR. WRIGHT: I think under Rule 403 it would be
24 prejudicial to the defendant, but if they want to walk into it,
25 that's what they're doing right now. I'm trying to protect his

1 rights and not have him get into the cop-killing bullets and
2 blowing up the jail.

02:47 3 MR. REED: He's not protecting my rights, Your Honor.
4 He's not protecting nothing. He's -- under Rule 701 he's not
5 even -- he has no forensic evidence of even the evidence that
6 he's submitting at this point in time. All I'm asking and
7 trying to get from this witness is did I facilitate the
8 delivery of somebody through foreign diplomatic channels
9 properly, and he refuses to answer, so I would like to use him
02:48 10 as a hostile witness because he's not answering. He is lying
11 right now, and I can prove it, Your Honor, and if I have to do
12 that, I will do that, but I don't want to prosecute an FBI
13 agent. He's a good man. He deserves to be able to tell the
14 truth without being coerced by the prosecuting attorney.

02:48 15 THE COURT: Well, I think Mr. Wright is correct that
16 if you keep on that line of questioning, it opens really bad
17 evidence. If I were you, I wouldn't do it, but I'm not giving
18 you legal advice. You may want to talk to your standby counsel
19 about that. I don't know.

02:48 20 MR. REED: I'll wait until I question him as a
21 witness, and I will just -- and I will just treat him as a
22 hostile witness. I'll move for hostile witness on my redirect,
23 when I bring forth my direct, because I have evidence and proof
24 that he is lying right now on the stand under the penalties of
02:49 25 perjury, and that is not correct. That is not right. There's

02:49

1 been very many -- there's been a lot of perjurers happen in
2 this case before the jury is even sequestered. Mr. Wright has
3 made statements and opened up that can of worms when they
4 threatened me with this case on this exact charges. They
5 threatened me if I didn't accept to plead guilty to something,
6 they were going to charge me with something else, and I don't
7 appreciate that.

8 THE COURT: Do you have any comment, sir?

9 MR. DAVIS: No. He's got a point there, so --

02:49

10 THE COURT: Okay. Thank you.

11 (In open court with the defendants, counsel and the
12 jury present.)

13 THE COURT: Mr. Reed, I don't know if there was a
14 question pending or not, but in any event, ask your next
15 question.

02:50

16 MR. REED: Okay. Thank you, Court and the jury, for
17 letting us work something out.

18 Q. (MR. REED CONTINUING) Initially I see you were -- were
19 you -- let me ask this question. Were you initially an
20 investigator on Neegee's Indictment?

02:50

21 A. Yes, sir, I was.

22 Q. And it's just come to my attention that he finally pled
23 guilty to a misprison of felony or a misprison of felony, which
24 is -- what did he misrepresent?

02:51

25 MR. WRIGHT: Excuse me. I'm going to object as not

1 being relevant and beyond the scope of this witness's
2 knowledge.

3 THE COURT: Sustained. We're not going to try that
4 case here. That was tried by some other court.

02:51

5 Q. (MR. REED CONTINUING) When was it that you learned that
6 Neegee was a Little Shell?

7 A. Probably when I -- when we, myself or the U.S. Attorney's
8 office, first started to receive the faxes and the documents
9 that came in post-Indictment.

02:51

10 Q. Okay, post-Indictment. What kind of faxes and documents
11 that specifically did you learn that he was Little Shell?

12 A. There were faxes to the U.S. Attorney's Office in federal
13 court, as I previously stated, commanding us to cease and
14 desist trying to effect his arrest. There were faxes to the
15 Turtle Mountain Tribal Court with him stating he was Little
16 Shell and he wanted to renounce his tribal membership. There
17 were two or three different batches of documents that
18 identified him as such and made different statements and things
19 that identified him to me as he was Little Shell.

02:52

20 Q. Did I ever send you any faxes?

02:52

21 A. My office received faxes with your name on them, so I
22 assume yes.

23 Q. And what was the date of that? Do you have that in your
24 notes?

02:52

25 A. No, sir, I don't. Sorry. It was early, first few months

1 of 2009, I believe.

2 Q. And what did the faxes pertain to from the Little Shell
3 that said -- that had my name on it? What were the faxes?

02:53 4 A. There were, again, documents regarding his Indictment,
5 ordering us not to arrest him, different instructions on orders
6 that should be taken regarding the prosecution of that case,
7 things of that nature.

8 Q. By any chance, can you -- do you have any of those?

9 A. No, I don't.

02:53 10 MR. REED: No further questions.

11 MR. DAVIS: I got a few.

12 THE COURT: Okay. Go ahead, Mr. Davis.

13 CROSS-EXAMINATION

14 BY MR. DAVIS:

02:53 15 Q. Can you hear me, Ryan?

16 A. Yes, sir, I can.

17 Q. How are you doing?

18 A. Good. How are you?

19 Q. I'm doing good. Okay. Me and you had some conversations
02:54 20 and phone conversations, right?

21 A. Yes, we did.

22 Q. Okay. In those conversations I just want to clarify one
23 thing. I was speaking to you as spokesperson of my people,
24 right?

02:54 25 A. Yes, sir.

1 Q. You and me actually had a real good long conversation the
2 first time in the office, right?

3 A. Yes.

4 Q. We sat knee to knee and we talked.

02:54

5 A. Yes, we did.

6 Q. Yeah, we did. And basically I -- what got us here, I said
7 I would do it in protection of my people, right, and I
8 explained how in that conversation?

9 A. Can you -- can you clarify your last statement?

02:54

10 Q. Okay. I said that we would protect our claim of
11 sovereignty or claim of right as land owning entity here, and
12 that we would like to have the tribal right to have judicial
13 process over our own people, and we talked about something like
14 that. And basically what I want to know from you, the
15 conversations that we did have, I had those as spokesperson of
16 my people with you, right?

02:55

17 MR. WRIGHT: Excuse me. I'm going to object. That
18 would be beyond the scope of this witness's knowledge --

19 MR. DAVIS: No, it's not.

02:55

20 MR. WRIGHT: -- who he's supposedly speaking for or
21 by or through.

22 MR. DAVIS: Well, that's why he came to the office,
23 was to ask who I was speaking for.

24 THE COURT: Sir, wait. Don't keep talking after he
25 made an objection. Overruled.

02:55

1 THE WITNESS: I know on at least one occasion you
2 identified yourself to me as the spokesperson for the Little
3 Shell Nation.

02:55 4 Q. (MR. DAVIS CONTINUING) Okay. Namely, people don't go
5 around doing that. Tribal people don't go around telling you
6 that, do they? You deal with them quite a bit, don't you?

7 A. You're the first one I met that identified himself as
8 such.

02:55 9 Q. Yeah, because tribes do not overstep those bounds, do
10 they? Tribal people, they don't go around claiming to be
11 leaders if they're not, right?

12 A. Like I said, you're the first one who's ever identified
13 himself as such to me.

14 Q. All right. All right.

02:56 15 A. I just -- I don't know if you're asking me if people go
16 around in general doing that. I just don't know. I'm trying
17 to answer the best I can in saying you're the first one that
18 I've ever met that did. I'm not trying to not answer your
19 question. I just don't know if others do or not.

02:56 20 MR. DAVIS: Yeah. Okay, Ryan, that's basically it.

21 THE COURT: Any other questions, sir?

22 MR. DAVIS: No, we'll call him for defense later,
23 just like we said. Thank you.

24 THE COURT: Mr. Wright, any redirect?

02:56 25 MR. WRIGHT: No, sir.

1 THE COURT: Mr. Reed, do you have any other questions
2 of this witness?

3 MR. REED: Not at this time. I'll save him for the
4 -- for when I call him as a witness.

02:56

5 THE COURT: All right. You may step down, sir. You
6 may call your next witness.

7 MR. WRIGHT: Dave Hagler.

8 THE CLERK: Please raise your right hand.

9 DAVID HAGLER,

02:57

10 having been first duly sworn, was examined and testified as
11 follows:

12 DIRECT EXAMINATION

13 BY MR. WRIGHT:

14 Q. would you state your name, please?

02:57

15 A. David Hagler.

16 Q. what's your occupation?

17 A. I'm an attorney, an assistant U.S. attorney here in
18 Bismarck.

19 Q. For how long?

02:57

20 A. I have been an assistant U.S. attorney since 2001.

21 Q. And what is your education?

22 A. I received undergraduate degree in communications from the
23 University of North Dakota in Grand Forks in 1986, received my
24 juris doctorate degree from UND Law School in 1989.

02:57

25 Q. And what are your standard duties?

1 A. I do criminal prosecution here in the District of North
2 Dakota, in particular the western part of the state.

3 Q. And are you a full-time federal prosecutor?

4 A. Yes, sir.

02:58

5 Q. And, sir, in the fall of 2009 and early 2010, did you
6 prosecute a man named Michael Howard Reed?

7 A. Yes.

8 Q. Do you see that individual in the courtroom?

9 A. I do.

02:58

10 Q. What were -- where's he at, please?

11 A. He's seated at the counsel immediately to your -- counsel
12 table immediately to your left.

13 Q. And what were you prosecuting Mr. Reed for?

02:58

14 A. Mr. Reed was prosecuted for defense of being a fugitive in
15 possession of a firearm.

16 Q. And did you secure the Indictment on that case?

17 A. Yes.

18 Q. And as such, are you familiar with the case and the
19 pleadings?

02:58

20 A. Yes.

21 Q. And what do we mean when we say the word "pleadings"?

22 A. Oh, basically the charging document and the other filings
23 that would take place in a criminal case.

02:59

24 Q. Mr. Hagler, I'm going to show you what's been marked as
25 Government's Exhibit Number 5. Can you hold that in your hand

1 please? Do you recognize that?

2 A. Yes, I recognize that.

3 Q. And what is it?

4 A. That is a copy of the Indictment that was secured in the
5 matter that I prosecuted.

6 Q. And is that a certified copy of that Indictment, sir?

7 A. Yes, it is.

8 Q. And does it say at the top when it was filed?

9 A. Filed on September 24, 2009.

10 Q. And the second page of that Indictment, is it signed by a
11 specific person from the U.S. Attorney's Office, or is a
12 person's name on the end of the Indictment?

13 A. Yes.

14 Q. And who is that?

15 A. It's Lynn C. Jordheim, who was acting United States
16 attorney at that time.

17 Q. And he being the acting U.S. attorney for the District of
18 North Dakota.

19 A. He was at that time, yes.

20 Q. And is it common to have the boss's name or the acting
21 U.S. attorney on the end of every Indictment?

22 A. That's our practice, yes.

23 Q. And, Mr. Hagler, if you could take this highlighter,
24 please, could you just highlight the date at the top,

25 September 24, 2009?

1 A. All right. I've done so.

2 Q. Did the clerk's office assign a number to that Indictment,
3 clerk's office number?

4 A. Yes.

03:00

5 Q. And what number was that?

6 A. It's Case Number 4:09-cr-76.

7 Q. And is the -- in your experience, does the 09 stand for
8 2009?

9 A. Yes.

03:00

10 Q. And the 76 would be the 76th case filed?

11 A. Yes.

12 Q. Can you highlight that number, please?

13 A. Okay. I've done so.

14 Q. On the second page, can you highlight Mr. Jordheim's name?

03:00

15 A. Okay. I've done so.

16 Q. And is that a certified copy?

17 A. Yes.

18 MR. WRIGHT: And we would at this time offer Exhibit
19 Number 5.

03:01

20 THE COURT: Any objection to five?

21 MR. REED: No.

22 MR. DAVIS: No.

23 THE COURT: Five may be admitted.

24 MR. WRIGHT: Sir, may I publish while I continue?

03:01

25 THE COURT: You may.

1 Q. (MR. WRIGHT CONTINUING) Mr. Hagler, in your trial
2 involving Mr. Reed, do you recall who the judge was assigned to
3 that case?

4 A. Yes.

03:01

5 Q. And who was that?

6 A. It was Judge Daniel Hovland.

7 Q. How many active federal judges are there in North Dakota?

8 A. There are two.

9 Q. And who are they?

03:01

10 A. Judge Hovland and Judge Ralph Erickson.

11 Q. Actually Ralph Erickson?

12 A. Yes.

13 Q. And are you familiar with the docket sheet on Mr. Reed's
14 case?

03:01

15 A. Yes.

16 Q. And if I could show you Exhibit Number 6, do you recognize
17 that?

18 A. Yes, it appears --

19 Q. What is that?

03:02

20 A. It appears to be the first page of the docket sheet of the
21 case we've been talking about.

22 Q. And is that also a certified copy?

23 A. Yes.

03:02

24 Q. And does it show Judge Hovland's name as the judge on that
25 case?

1 A. Yes, it does.

2 Q. Could you highlight that, please?

3 A. All right. I've done so.

4 Q. Can you highlight the clerk's number on that sheet too,
5 please?

6 A. I've done so.

7 MR. WRIGHT: At this time we would offer Exhibit 6.

8 THE COURT: Any objection?

9 MR. REED: No objection.

10 MR. DAVIS: No.

11 THE COURT: Six may be admitted.

12 MR. WRIGHT: May I publish?

13 THE COURT: You may.

14 Q. (MR. WRIGHT CONTINUING) Mr. Hagler, do you recall when
15 Mr. Reed was awaiting trial on that firearm case, was he in
16 custody?

17 A. Yes, he was.

18 Q. And as the prosecutor on the case, are you familiar with
19 the document entitled Motion to Dismiss Indictment?

20 A. Yes, I believe there was one such document filed.

21 Q. And occasionally in cases you prosecute there are motions
22 to dismiss indictments that are filed.

23 A. Occasionally.

24 Q. And the judge -- the judge will make a determination on
25 whether or not to grant or deny that motion, is that correct?

1 A. Correct.

2 Q. And was such a motion made in your case?

3 A. I do believe it was.

4 Q. I'm going to show you what's been marked as Exhibit

03:03

5 Number 7. Do you recognize that?

6 A. Yes, it does appear to be a Motion to Dismiss that was
7 filed in that case.

8 Q. And that was filed by the defendant, Mr. Reed.

9 A. Correct.

03:03

10 Q. And that's -- is that a certified copy of a record in the
11 clerk's file?

12 A. Yes.

13 Q. And by the way, does he have the wrong caption on that
14 case?

03:03

15 A. Actually, yes. He's got it listed as the State of Nevada
16 as the plaintiff.

17 Q. That's not actually correct, is it?

18 A. No, it should be the United States of America as the
19 plaintiff. The case number is the same as we've been

03:04

20 referencing in this case.

21 Q. Does the -- does the Motion to Dismiss the Indictment, is
22 that a true and correct copy of that document, a certified
23 copy?

03:04

24 A. You know, I've not reviewed the court file recently, but
25 it appears to be a correct copy of one that I've previously

1 seen, yes.

2 Q. The bottom right-hand corner, is it certified as such by
3 the clerk?

4 A. Yes.

03:04

5 MR. WRIGHT: All right. At this time we would offer
6 Exhibit 7.

7 THE COURT: Any objection to seven?

8 MR. REED: Oh, no. No, not at all.

9 THE COURT: Mr. Davis, any objection to seven?

03:04

10 MR. DAVIS: No. No.

11 THE COURT: Exhibit 7 may be admitted.

12 MR. WRIGHT: May I publish?

13 THE COURT: You may.

03:05

14 Q. (MR. WRIGHT CONTINUING) I'm going to hand you what's been
15 marked as Exhibit Number 8. Do you recognize that?

16 A. Yes, this is Judge Hovland's Order Denying Defendant's
17 Motion to Dismiss.

18 Q. All right. And typically when there's a motion to dismiss
19 the Indictment, does the Judge deny that orally or in writing?

03:05

20 A. Well, if it's -- if it's a pretrial matter, as this one
21 was, it's very -- most commonly going to be a written order.

22 Q. All right. And is Exhibit 8 Judge Hovland's written Order
23 Denying Defendant's Motion to Dismiss Indictment, which is
24 contained in Exhibit 7?

03:05

25 A. Yes.

1 Q. All right. What is the date of the Judge's denial of the
2 Motion to Dismiss the Indictment on the last page?

3 A. It's dated and was filed on January 5, 2010.

4 Q. Can you highlight that date, please?

03:05

5 A. All right. I've done so.

6 MR. WRIGHT: And at this time we would offer Exhibit
7 Number 8.

8 THE COURT: Any objection to that?

9 MR. DAVIS: No.

03:06

10 MR. REED: No objection.

11 THE COURT: Exhibit 8 may be admitted.

12 MR. WRIGHT: May I publish?

13 THE COURT: You may.

03:06

14 Q. (MR. WRIGHT CONTINUING) Mr. Hagler, I'm going to show you
15 what's marked as Exhibit Number 9. I'm going to have some more
16 testimony on this later, but what does that appear to be?

17 A. Well, there's a title on the top left. It says UCC
18 Financing Statement.

19 Q. And how many pages is that document?

03:06

20 A. Five pages.

21 Q. All right. And according to the document, who is listed
22 as the filer?

23 A. Gregory Davis.

24 Q. And who is listed as the two debtors in the debtor column?

03:07

25 A. Debtor one is listed as the U.S. District Court of North

1 Dakota/Daniel Hovland. And in Section 2, where it says
2 additional debtor, it says Acting United States attorney, Lynn
3 C. Jordheim.

03:07 4 Q. And is that -- was that the judge in your case and your
5 boss at the prosecutor's office?

6 A. Yes.

7 Q. Now I'd like you to go to page 3 of that document. Is
8 there some language that starts on the bottom of page 3 that
9 says, "This UCC lien"? Do you see where I'm referring to?

03:07 10 A. Yes.

11 Q. And does that go to the top of page 4, where it says,
12 "Michael Howard Reed"?

13 A. Yes.

14 Q. Could you read that sentence out loud, please?

03:07 15 A. "This UCC lien in this instant action is 2,400,100 USD for
16 default of court case, 1 million in silver coinage for
17 copyright violations of Michael Howard Reed," and then the
18 letters "TM."

19 Q. And where it says "default of court case," does it have an
03:08 20 actual clerk's office file number on the UCC statement?

21 A. Yes.

22 Q. And do you recognize that number?

23 A. Yes, it's the same number as was assigned to the fugitive
24 in possession of a firearm case that I prosecuted.

03:08 25 Q. So the Financing Statement has the same number as the

1 clerk's file that you're prosecuting against Mr. Reed, is that
2 correct?

3 A. Yes.

4 Q. Could you please highlight that language that we just
5 discussed, please?

6 A. All right. I've done so.

7 Q. Do you know of any reason why, from your prosecution of
8 this case, why Judge Hovland or Mr. Jordheim would owe the
9 defendants \$3.4 million?

10 A. No.

11 Q. Or 2.4 million in cash and 1 million in silver?

12 A. No.

13 Q. Do you know who Mr. Davis is, Greg Davis?

14 A. Yes.

15 Q. And do you see him in the courtroom?

16 A. Yes, I do.

17 Q. Where's he at?

18 A. He's seated to the left of Mr. Reed.

19 Q. And how do you know him?

20 A. I became familiar with who Mr. Davis is during the
21 prosecution of my case against Mr. Reed.

22 Q. Did Mr. Davis testify for Mr. Reed in that particular
23 trial?

24 A. He did.

25 Q. Did he also show up at other hearings that Mr. Reed had on

1 that case?

2 A. Yes, I believe so.

3 MR. WRIGHT: Thank you. That's all.

4 CROSS-EXAMINATION

03:10

5 BY MR. REED:

6 Q. In this Case 4:09-00076, were you ever given judicial
7 notice of a copyright?

03:10

8 A. Frankly, I don't know what that means, Mr. Reed. You
9 filed multiple documents during that case, and one of them may
10 have been what you just referred to.

11 MR. REED: Okay. At this time I will end my
12 questions, and I'll save all of my questions for when I recall
13 you as a witness. I'm finished.

14 THE COURT: Any questions that you have, Mr. Davis?

03:11

15 MR. DAVIS: No, not right now, Your Honor. Save them
16 all for later.

17 THE COURT: Okay. Any redirect?

18 MR. WRIGHT: No, sir.

19 THE COURT: You may step down, sir.

03:11

20 THE WITNESS: Thank you, Your Honor.

21 THE COURT: Let's take one more witness before we
22 take a break.

23 MR. WRIGHT: Yes, sir. Ida Williams.

03:11

24 THE CLERK: Can I have you please raise your right
25 hand?

1 IDA WILLIAMS,
2 having been first duly sworn, was examined and testified as
3 follows:

4 DIRECT EXAMINATION

03:12 5 BY MR. WRIGHT:

6 Q. would you state your name, please?

7 A. Ida williams.

8 Q. And what is your occupation?

9 A. I'm the Deputy Recorder of Deeds in Washington, DC.

03:12 10 Q. And can you give us your education, please?

11 A. I hold a BA in economics from the University of Toronto in
12 Albania and also a law degree from Hamline University, School
13 of Law in St. Paul, Minnesota.

14 Q. And how long have you been with the Recorder of Deeds
03:12 15 office?

16 A. Almost two years.

17 Q. Do you have any special training for this particular
18 position?

19 A. Yes, before I joined the Recorder of Deeds Office I was a
03:12 20 claims attorney, a title claims attorney, worked with First
21 American Title Insurance Company, so I had plenty of training
22 in title examination, title searches and claims that came from
23 what we call in the industry clouds in title.

24 Q. And tell us a little bit about the washington, DC,
03:13 25 Recorder of Deeds Office.

03:13

1 A. The Recorder of Deeds Office is responsible for recording
2 all land records in the DC area. We record what we call like
3 deeds, mortgages, and they are within the land records limits.
4 But also we record what we call chattel documents, chattel
5 documents like liens that don't encumber property, so they're
6 not liens that are secured against properties, but as we call
7 them general documents. And hospital liens are some of them,
8 UCC's, judgments issued by the Superior Court, DC Superior
9 Court.

03:13

10 Q. And does your office have default jurisdiction on liens
11 and Financing Statements?

03:14

12 A. Yes, DC is a default jurisdiction for filing Financing
13 Statements or UCC's, so anyone in the United States, wherever
14 they are, they can file this lien, the UCC Financing Statement
15 with our office.

16 Q. And is that a public or private record?

17 A. It's public record.

18 Q. All right. And when you accept for file a UCC Financing
19 Statement, what do we mean when we say a Financing Statement?

03:14

20 A. Can you repeat the question, please?

21 Q. What do we mean when we say a UCC Financing Statement?

03:14

22 A. As we classify it in our office, we have UCC's for land
23 records and UCC's for general records, so some UCC's, they're
24 just evidence of indebtedness. And in many cases they are
25 secured by property, real property, and that's what we call UCC

03:14 1 land records. And some of the UCC's, they are just general.
2 They're not encumbered or they don't encumber real property,
3 and these fall under the classification of general records. So
4 UCC's in general for our office, from our point of view, they
5 evidence some type of indebtedness, and whoever holds the UCC,
6 they want to file it with our office so whenever a search is
7 done, because it's public records, someone will see that there
8 is a potential lien against the debtor named in the UCC.

9 Q. Can a Financing Statement be filed electronically?

03:15 10 A. Yes.

11 Q. Can you explain that?

12 A. Many documents in our office can be filed electronically,
13 and UCC's are one of them. When UCC's are filed electronically
14 so they can be done anywhere in the United States from
03:15 15 everybody -- anyone that has a scanner in his office or at home
16 or anywhere, at any time of the day, any time of the week, they
17 can file it electronically. All they need is a password. They
18 create an account with -- which is prompted into the website,
19 and they can file the UCC electronically.

03:15 20 Q. And I assume there's a filing fee for filing a Financing
21 Statement?

22 A. Yes.

23 Q. And what is that, if you know?

03:16 24 A. If the UCC -- that's why I made the classification of land
25 records and general documents. There are two separate fees.

1 The land records are \$26.50 for the first two pages, and for
2 general documents or general UCC's it's \$46.50 for the first
3 two pages.

03:16 4 Q. Now, if a document is filed electronically after hours,
5 what review, if any, is done by your office before it's
6 actually filed?

03:16 7 A. It doesn't get any reviews from our office. Any UCC that
8 is filed electronically, it doesn't matter at what time of the
9 day it's filed, it is not reviewed by our office. It goes
10 straight to the public system. It becomes public record.

11 Q. And if a document is filed electronically after hours,
12 then it will be filed, is that correct?

13 A. Correct. Yes.

03:16 14 Q. And if you know, what's the rationale for allowing these
15 liens to be automatically filed with no review by your office?

03:17 16 A. This was a law that was passed. It's definitely not
17 within the purview of our office, and just to streamline the
18 process a little bit, create more time -- I mean, it allows us
19 to focus our resources on documents that we receive in person
20 over there.

21 Q. And pursuant to law, does your office have any discretion
22 whether or not to reject any of these that are filed
23 electronically after hours?

03:17 24 A. Since we don't review it, no, we don't have any discretion
25 to reject documents that are filed electronically. We do have

1 the discretion for documents that are filed in person.

2 Q. And so by law you have to accept filings that come late at
3 night if filed electronically.

4 A. Correct.

03:17

5 Q. All right. And each Financing Statement that is
6 ultimately filed, are they assigned a docket number by your
7 office?

8 A. Yes, they receive what we call an instrument number or
9 document number.

03:17

10 Q. And how is that number determined?

11 A. DC is a res jurisdiction, so it's a ten-digit number. The
12 first ten (sic) digits represent the year, so we are in the
13 year 2010, so the first four digits will be the year 2010. And
14 then the other six digits are numbers that are assigned

03:18

15 automatically by the system based on the very last document
16 that was recorded and it was assigned a number.

17 Q. So hypothetically -- just hypothetically, if an individual
18 files a lien after hours on a judge or something like that,
19 your office would have to accept that, is that correct?

03:18

20 A. Correct. Yes.

21 Q. Now I'll show you what's been marked as Exhibit Number 9.
22 Do you recognize this, ma'am?

23 A. Yes, this is a UCC Financing Statement. It bears the
24 stamp showing the document number and the information that

03:18

25 normally is required by law in Washington, DC, to appear on a

1 document.

2 Q. And is that a certified copy of a UCC Financing Statement
3 on file with your office?

4 A. Yes, this is a certified copy that bears our certification
5 seal on the very last page.

6 Q. And was that filed on January 6, 2010?

7 A. Yes.

8 Q. In fact at 10:01 p.m.

9 A. That's correct, yes.

10 Q. How many pages is that document?

11 A. It's five pages.

12 Q. And, ma'am, referring to that document now, if you could
13 pick up that highlighter that I got in front of you, what is
14 the docket number? You can just set it down. I guess I told

15 you to pick it up. What's the docket number on the top
16 right-hand side?

17 A. The document number is 2010001134.

18 Q. Can you highlight that, please?

19 A. (Drawing.)

20 Q. And is the date and time highlighted right below that?

21 A. Yes.

22 Q. Can you highlight that?

23 A. (Drawing.)

24 Q. And does it say on the top the Official Recorder (sic) of
25 Washington, DC, Recorder of Deeds?

1 A. Yes, it does.

2 Q. Can you highlight that, please?

3 A. (Drawing.)

4 Q. Now, on Subsection A, does it mention the name of the
5 filer?

6 A. Yes, it does.

7 Q. And can I have you just speak up nice and loud for me?

8 A. Yes, it does.

9 Q. And what's the name of the filer listed on there?

10 A. Last name Davis, Gregory.

11 Q. Could you highlight that, please?

12 A. (Drawing.)

13 Q. And does -- is his name also above that? Is it listed
14 twice?

15 A. Yes, it is. It's --

16 Q. Can you highlight that whole --

17 A. -- under Section A and B.

18 Q. Now, is the debtor -- the debtors listed on that Financing
19 Statement?

20 A. Yes, it is. It's listed under Field 1, Section 1.

21 Q. And who are the two debtors that are listed on your
22 Financing Statement?

23 A. The first one I see is U.S. District Court of North
24 Dakota, Daniel Hovland.

25 Q. Can you highlight that, please?

1 A. (Drawing.)

2 Q. And who's the second one?

3 A. It's the Acting United States Attorney, Lynn Jordheim.

4 Q. Can you highlight that?

03:21

5 A. (Drawing.)

6 MR. WRIGHT: Okay. At this time we would offer

7 Exhibit 9.

8 THE COURT: Any objection to that?

9 MR. DAVIS: No.

03:21

10 MR. REED: No.

11 THE COURT: Nine may be admitted.

12 MR. WRIGHT: May I publish that on the Elmo, sir?

13 THE COURT: You may. Ma'am, is your office the DC
14 equivalent of the secretary of state's office or something of
15 that nature where the UCC filings are made?

03:21

16 THE WITNESS: No, it's not.

17 THE COURT: Do you normally file UCC Financing
18 Statements from all over the country?

19 THE WITNESS: Yes, so we just accept the filings, so
20 people from all over the United States, they can either mail
21 UCC's to us, they can file them electronically, or they can
22 just walk in in person and provide us with a UCC.

03:21

23 THE COURT: All right.

24 Q. (MR. WRIGHT CONTINUING) Ma'am, referring to what's on the
25 overhead now, way up there on the top, is that the docket

03:22

1 number that your office puts on a case?

2 A. Yes, that's a ten-digit document number.

3 Q. And I assume the 2010 is for year it was filed?

4 A. Correct. Yes.

03:22

5 Q. And the 1134, is the 1,134th --

6 A. Correct.

7 Q. -- Financing Statement filed.

8 A. Yeah, that was the 1,134th document that was recorded up
9 to the date, January 6, 2010.

03:22

10 Q. Very good. And the name of the filer is listed as Gregory
11 Davis in two places?

12 A. Correct. Yes.

13 Q. And the debtors listed are Judge Hovland and Lynn
14 Jordheim, is that correct?

03:22

15 A. Correct. Yes.

16 Q. And then referring to page 3, is the language at the
17 bottom, that this UCC lien involves \$2.4 million USD?

18 A. That's what it reads.

19 Q. And I assume USD stands for United States dollars?

03:23

20 A. I would assume so.

21 Q. And then it mentions default of a court case, and then
22 there's a number there, is that correct?

23 A. Correct. Yes.

24 Q. And then it also mentions \$1 million in silver.

03:23

25 A. That's what it reads, yes.

1 Q. It actually says "sliver" does it not, S-L-I-V-E-R?

2 A. Yes.

3 MR. WRIGHT: Okay. Thank you. That's all.

4 THE COURT: Any questions of this witness?

5 MR. REED: Yes.

6 CROSS-EXAMINATION

7 BY MR. REED:

8 Q. On the UCC Financing Statement and what you just said, it
9 says that the default jurisdiction would be the District of
10 Columbia, Washington, DC, correct?

11 A. Yes, that is correct.

12 Q. What is the original jurisdiction for the Uniform
13 Commercial Code?

14 MR. WRIGHT: Again, I would object to that, Your
15 Honor. This Court will provide the law for the jury.

16 THE COURT: Overruled. She may answer it if she
17 knows.

18 THE WITNESS: I don't know the original jurisdiction
19 for the particular document.

20 Q. (MR. REED CONTINUING) Okay. And anyone can file -- any
21 person anywhere in the world can file this on the internet at
22 any time?

23 A. That's correct, yes.

24 Q. Pursuant to what law is the Uniform Commercial Code under?

25 A. I can't think of the law right now. It's just that I've

03:25

1 been in this office for two years. We just know it's a default
2 jurisdiction. I'm sure that if I did some research, I could
3 come up with the reference -- the legal reference to what made
4 the District of Columbia default jurisdiction, but I don't have
5 that information with me now.

03:25

6 Q. Okay. I'd appreciate it if you would find that for the
7 redirect, when I call you as a defense -- on the defense part.
8 Also, the Uniform Commercial Code is -- who actually files in
9 the Uniform Commercial Code in Washington, DC? Who -- what's
10 the standard?

11 A. Anyone can file it.

03:25

12 Q. Anybody just files all the time, or is it just
13 specifically states that file with your office in Washington,
14 DC, or foreign countries or -- I need to understand this a
15 little better.

03:26

16 A. Anyone can file a UCC Financing Statement with our office.
17 Many times -- oftentimes there are law firms that submit them.
18 However, if your question is who can bring them physically to
19 our office and file them, there is no restrictions, so normally
20 they have what we call runners or abstractors to bring the
21 filings over there. We never looked at the -- who is bringing
22 them or who is filing the documents. Anyone can bring and file
23 the documents.

03:26

24 Q. And where else can you file a UCC? Can you file one,
25 let's say, in the state of North Dakota?

1 A. That, I would not know. I mean, I just get -- I can only
2 make reference to Washington, DC. In Washington, DC, the only
3 place where you can file a Financing Statement is my office,
4 the Recorder of Deeds Office.

03:26

5 Q. So you don't know if the state of North Dakota or the
6 state of South Dakota or any other state offers the service of
7 filing UCC Financing Statements?

8 A. I would be surprised if they don't. I'm sure that they
9 have an office where you can file these Financing Statements.

03:26

10 Q. Okay. Now, where would that be, do you know?

11 A. No, I would not know that.

12 Q. Okay. You testified earlier on the UCC Financing
13 Statement, that Gregory Davis was the filer?

03:27

14 A. According to the document, Section A, that's what it
15 shows. Normally that's where the name of the filer goes.

16 Q. Okay. So that would be the contact, contact, that filer.
17 Okay. What does -- Section 3, secured party, what is that
18 section? Is that who the secured party of the lien is?

19 A. I need to look at the form because --

03:27

20 MR. REED: May I approach?

21 THE WITNESS: -- each field has a title in there, so
22 I can't recall the form off the top of my head, what Section 3
23 is about. If it says "secured party," then it means that you
24 have to fill in the name of the secured party.

03:28

25 Q. (MR. REED CONTINUING) Okay.

1 THE COURT: Where's the original document?

2 Q. (MR. REED CONTINUING) Does that have to be done -- before
3 you can accept the filing, does that have to be done?

03:28 4 A. Correct. The way the system is designed is that you
5 cannot -- it will not accept the filing if you don't have
6 information inserted in certain fields. The debtor's field is
7 one. The secured party is one. Otherwise, if you don't fill
8 in those fields, the system will not accept it. It'll reject
9 the document.

03:28 10 Q. So it will automatically reject it.

11 A. Exactly, the system will reject the document.

12 Q. Okay. So it's -- there's somebody that files it, and
13 it's -- and then earlier you said that chattel -- chattel
14 documents, I don't understand exactly what a chattel -- I don't
03:28 15 understand the term of that word. What is that?

16 A. It's -- it means general documents. It's anything but
17 land records because many documents are liens or they -- they
18 are in reference to property, real property, and some documents
19 don't encumber real property. And some of the UCC's, for
03:29 20 example, if you see them, you'll see that they are secured on
21 stoves, refrigerators or other items that are not land or real
22 property, so that's why we have this classification.

23 Q. Okay. So that would be -- so anything other than land is
24 chattel documents.

03:29 25 A. Yes.

1 Q. Okay. Is the -- that must be -- UCC must be an
2 abbreviation for something, is it not?

3 A. Uniform Commercial Code.

4 Q. Uniform Commercial Code. Is that an international
5 terminology, Uniform Commercial Code?

6 A. I don't know how they would say it in French.

7 MR. REED: At this time I have no further questions.

8 THE COURT: Any questions that you have, Mr. Davis?

9 MR. DAVIS: No, sir. I'll wait to redirect later.

10 THE COURT: All right. Redirect, Mr. Wright?

11 MR. WRIGHT: No redirect, Your Honor. May counsel
12 approach the bench?

13 THE COURT: No.

14 MR. WRIGHT: No redirect of this witness.

15 THE COURT: All right. You may step down. Would
16 this be a good time to take a recess before the court reporter
17 collapses? Keep in mind that I'm required to tell you each
18 time as though you were stupid and can't remember anything,
19 that you're not to discuss this case among yourselves or with
20 anyone else. You are not to allow anyone to discuss the case
21 with you. You are not to form or express any opinion on the
22 case until it is finally submitted to you. And for heavens
23 sake, don't go on the internet during the break, or something,
24 and start checking out something. Okay. We'll be -- let me
25 ask this. Is this -- is it hardship if we go later than

1 5 o'clock for you folks?

2 THE JUROR: Sort of.

3 THE COURT: Sort of? Well, tell me what you think.
4 Do you have something going on tonight?

03:31

5 THE JUROR: Yeah, I do. Yeah, but, I mean, it's up
6 to you. If we can get out at 5:00, that would be nice.

7 THE COURT: All right. Let's see how it goes then.
8 Okay. The jury is excused. All rise.

9 (The jury exits the courtroom.)

03:32

10 THE COURT: You have something you want to bring to
11 my attention, Mr. Wright?

12 MR. WRIGHT: Well, Your Honor, the last three or four
13 witnesses the defendants are saying, well, we're going to save
14 our cross-examination when we call these witnesses later. Some
15 of these witnesses, especially the last witness from

03:32

16 Washington, DC, does have a plane to catch tomorrow, and we
17 object to them passing on cross-examination and trying to
18 recall the witnesses later. I mean, certainly once in a while
19 you need to recall a witness, but they're making this a general
20 practice with every witness. And if there is cross-

03:32

21 examination, we think they should do it at the time assigned
22 and not just have everybody wait until the trial is ended
23 tomorrow, then bring all these people back, so we object to
24 that on principle, especially these out-of-town witnesses that
25 have planes to catch.

03:32

1 THE COURT: Why don't you ask -- it's not convenient,
2 but they have a right to do that.

3 MR. WRIGHT: I just wanted to make a record on that.

4 THE COURT: Understand. Okay. The court is in
5 recess.

6 (A recess was taken from 3:33 p.m. to 3:58 p.m., the
7 same day.)

8 THE COURT: You may call your next witness, Mr.
9 Wright.

10 MR. WRIGHT: Aaron Kellerman.

11 AARON KELLERMAN,
12 having been first duly sworn, was examined and testified as
13 follows:

14 DIRECT EXAMINATION

15 BY MR. WRIGHT:

16 Q. Would you state your name, please?

17 A. My name is Aaron Kellerman.

18 Q. What is your occupation?

19 A. I'm a special agent with the Federal Bureau of
20 Investigation.

21 Q. For how long?

22 A. A little over seven years.

23 Q. Give us your educational background.

24 A. In 1998 I got a Bachelor of Science degree from James
25 Madison University in Harrisonburg, Virginia. In 2001 I

1 received my law degree from Duke University in Durham, North
2 Carolina.

3 Q. So you're a lawyer, FBI agent?

4 A. I guess technically, yes.

03:59

5 Q. Is that common for FBI agents, some FBI agents to also be
6 attorneys?

7 A. Yes.

8 Q. And what are your standard duties?

03:59

9 A. I'm stationed in the Grand Forks, North Dakota, resident
10 agency. It's a small office, so I investigate all types of
11 crimes, but most of my caseload comes from violent crimes on
12 the Spirit Lake Indian Reservation.

13 Q. Now, are you the lead agent in this alleged false lien
14 case against Mr. Davis and Mr. Reed?

03:59

15 A. Yes.

16 Q. As part of your duties, you interviewed Mr. Davis on this
17 case.

18 A. Yes.

19 Q. Do you see him in the courtroom?

03:59

20 A. Yes, I do.

21 Q. Where's he at?

22 A. He is the second one on my right at the defense table.
23 He's wearing a white button-down shirt.

24 Q. You also interviewed Mr. Reed in this case.

03:59

25 A. Yes.

1 Q. Do you see him in the courtroom?

2 A. Yes.

3 Q. Where is he at?

4 A. He's the first one at the defense table. He's wearing a
5 button-down brown shirt.

6 Q. Thank you. Can I see Exhibit 9, please? Mr. Kellerman,
7 as part of your duties on this case, did you have an
8 opportunity to review what's now been received as Exhibit
9 Number 9 in this case?

10 A. Yes, I did.

11 Q. And what is that?

12 A. It's a UCC Financing Statement.

13 Q. Can I have that back, please?

14 A. Yes.

15 Q. And after you received and reviewed this Financing
16 Statement, after you received and reviewed this, did you
17 attempt to interview Mr. Davis?

18 A. Yes.

19 Q. Is that because his name was on the Financing Statement as
20 the filer?

21 A. Yes.

22 Q. Did you do an interview with him?

23 A. Yes, I did.

24 Q. And when was that, sir?

25 A. It was January 20th of 2010.

1 Q. where was that interview at?

2 A. It occurred at the Rolette County Sheriff's Office.

3 Q. How was it set up?

04:00 4 A. I telephoned Mr. Davis on that date. I informed him of
5 who I was, why I wanted to talk to him. It was a voluntary
6 interview, that he wasn't going to be arrested. I asked him to
7 select a location where he would be most comfortable, and he
8 selected that location, is where he would like to be
9 interviewed.

04:01 10 Q. And did Mr. Davis come in for that interview --

11 A. Yes.

12 Q. -- on the 20th of January 2010?

13 A. Yes.

14 Q. was he alone when he showed up?

04:01 15 A. No, he showed up with two other individuals.

16 Q. And where in the sheriff's office was the interview done?

17 A. It was done in the sheriff's office, his actual physical
18 -- the sheriff.

19 Q. The sheriff's office.

04:01 20 A. Yes.

21 Q. Okay. And is there a videocamera in that office?

22 A. Yes.

23 Q. was this interview videotaped?

24 A. Yes.

04:01 25 Q. And that particular day, did you initially meet Mr. Davis

1 someplace outside the sheriff's office?

2 A. Yes, it was at the front entrance to the building.

3 Q. And did you escort him and the two men into the sheriff's
4 office then?

04:01

5 A. Yes, we walked back to the room.

6 Q. Was there anyone else in law enforcement in the interview
7 room?

8 A. Yes, Special Agent Andrew Eilerman, who's also in the
9 Grand Forks office.

04:01

10 Q. What did you tell Mr. Davis before the interview started?

11 A. I just gave him the standard warnings, that it was a
12 voluntary interview. He wasn't under arrest. He could stop
13 the interview at any time.

14 Q. And you were in court, weren't you, when Mr. O'Neil
15 testified about his interview with Mr. Reed?

04:02

16 A. Yes.

17 Q. And it seemed like the rights for Mr. Reed were more
18 detailed. Is there a reason for that?

19 A. Mr. Reed was in custody. He was under arrest when he was
20 interviewed by Mr. O'Neil, so based on that he has to be read
21 his Miranda warning. Mr. Davis wasn't under arrest, so he
22 didn't get any Miranda warnings.

04:02

23 Q. And is that, as you understand it, what you're supposed to
24 do?

04:02

25 A. Yes, in a noncustodial interview you don't have to give

1 Miranda warnings.

2 Q. Now, did you have a copy of Exhibit 9, that Financing
3 Statement with you when you interviewed Mr. Davis?

4 A. Yes, I did.

04:02

5 Q. Did you come out and ask Mr. Davis if he's the individual
6 that filed the Financing Statement against Judge Hovland and
7 against Lynn Jordheim?

8 A. Yes, I did.

9 Q. And what did he say?

04:02

10 A. He said that he filed it.

11 Q. What did he -- did he say he was sorry or remorseful about
12 it?

13 A. No.

14 Q. What did he say regarding that?

04:02

15 A. He just stated generally that any time anyone from his
16 tribe was arrested, they could do it, and they would continue
17 doing it.

18 Q. Did he threaten to file more liens?

19 A. Yes.

04:03

20 Q. Did you discuss with Mr. Davis how he filed the lien?

21 A. Yes, I did.

22 Q. And what did he say?

23 A. He said he filed it over the internet.

04:03

24 Q. Did you discuss the \$2.4 million and the \$1 million in
25 silver?

1 A. Yes, I did.

2 Q. During this interview, did Mr. Davis talk a great deal
3 about the Queen of England and bankruptcy law and things like
4 that?

04:03

5 A. Yes, he went on a few discussions like that where he
6 talked about various things, about gold bullion and the Queen
7 of England and money being held in trust, stuff like that that
8 I didn't really understand.

04:03

9 Q. Did you talk with Mr. Davis about the two debtors listed
10 on the Financing Statement, Judge Hovland and Mr. Jordheim?

11 A. Yes.

12 Q. And how did he refer to Mr. Jordheim as?

13 A. At some point in the interview he referred to him and all
14 lawyers as legal lunatics.

04:03

15 Q. And, Mr. Kellerman, did you advise Mr. Davis specifically
16 that filing false liens against public officials could be
17 against federal law?

18 A. Yes.

19 Q. And what did Mr. Davis say in that regard?

04:04

20 A. He stated that didn't apply to him, he could file liens
21 whenever he wanted. At one point he referred to the statute as
22 ass wipe.

23 Q. And those are his words?

24 A. Yes.

04:04

25 Q. Now, you said this interview was videotaped?

1 A. Yes.

2 Q. And what kind of machine was that on?

3 A. It was recorded to a VHS tape.

4 Q. Do you know approximately how long the videotaped
5 interview is?

6 A. It takes about 45 minutes.

7 Q. And have you reviewed the tape prior to this trial, sir?

8 A. Yes.

9 Q. Are you convinced it was accurately recorded?

10 A. Yes.

11 Q. I'm going to hand you what's been marked Government's
12 Exhibit 10 and 10a. Do you recognize those, sir?

13 A. Yes.

14 Q. And what are they?

15 A. Ten is an Elsur envelope. That's where we store
16 electronic evidence. This contains the VHS tape, and 10a is a
17 DVD recording I made from the VHS tape.

18 Q. Okay. Is Exhibit 10 the VHS tape, the actual tape that
19 was made during the interview?

20 A. Yes.

21 Q. And Exhibit 10a, is that a CD or DVD that you burned
22 yourself from the VHS tape?

23 A. Yes, I burned it two days later.

24 Q. And again, are both of those true and accurate videos of
25 your interview with Mr. Davis --

1 A. Yes.

2 Q. -- in January of 2010?

3 A. Yes.

4 MR. WRIGHT: We would offer 10 and 10a at this time.

04:05

5 THE COURT: Any objection?

6 MR. REED: No objection.

7 MR. DAVIS: No. No.

8 THE COURT: Those exhibits may be admitted.

9 MR. WRIGHT: May I have the clerk play Exhibit 10a,

04:05

10 sir?

11 THE COURT: The FBI did this?

12 MR. WRIGHT: The recording?

13 THE COURT: Yeah.

14 MR. WRIGHT: Yes. May I have her play this tape?

04:05

15 THE COURT: You may.

16 MR. WRIGHT: If I may, Your Honor, is this about

17 45 minutes?

18 THE WITNESS: Yes.

19 MR. WRIGHT: Thank you.

04:05

20 (Exhibit 10a is played in open court.)

21 THE COURT: Call your next witness.

22 MR. WRIGHT: I have some more questions of this

23 witness, Your Honor.

24 THE COURT: Oh, I'm sorry.

04:54

25 MR. WRIGHT: But I'm just about done.

1 THE COURT: Go ahead.

2 Q. (MR. WRIGHT CONTINUING) Mr. Kellerman, during the video
3 that we saw with your interview of Mr. Davis, he mentioned a
4 couple of times the administrative process. Do you know what
5 he was talking about?

6 A. Not really, no.

7 Q. He mentioned a number of times about the bankruptcy of
8 North America. Did you know what he was talking about?

9 A. No.

10 Q. At one point in the interview Mr. Davis took out a pen and
11 wrote a bunch of stuff on your documents. Do you recall
12 specifically what he was writing?

13 A. No, but I have that document with me.

14 Q. And he pulled out a stamp and put his stamp on the
15 document. Do you know what that stamp was?

16 A. I think it was his fingerprint, actually.

17 Q. All right. And when you called him up for the interview,
18 to come in, did you tell him to bring a fingerprint stamp or
19 anything like that?

20 A. No, he brought all that with him.

21 Q. Now, about three months after your interview with
22 Mr. Davis, did you interview Mr. Reed regarding some documents
23 that he filed with the clerk's office?

24 A. Yes.

25 Q. I'd like to show you what's been marked as Exhibits 11 and

1 12. Do you recognize those, sir?

2 A. Yes.

3 Q. And what are they?

4 A. They're some filings made by Michael Howard Reed.

04:55

5 Q. And are they handwritten?

6 A. Yes.

7 Q. And are they signed at the bottom of each document?

8 THE COURT: Mr. Wright, did you say Exhibits 1 and
9 12, or did you say 11 and 12?

04:55

10 MR. WRIGHT: I thought I said 11 and 12. If I
11 misspoke, I apologize.

12 THE WITNESS: Yes, they're both signed.

13 Q. (MR. WRIGHT CONTINUING) Who are they signed by?

04:55

14 A. One is signed by Michael Howard Reed, and the other one is
15 signed Boa-kaa-konan-na-ishkawaanden. I apologize if I said
16 that incorrectly.

17 Q. And is -- which document is signed Michael Howard Reed?

18 A. That would be Exhibit 12.

04:56

19 Q. And where he signs Exhibit 12, does he also sign the Boa
20 name on that?

21 A. It's written underneath the signature line, yes.

22 Q. In addition to Michael Howard Reed --

23 A. Yes.

04:56

24 Q. -- is that correct? And are each of those documents
25 certified copies?

1 A. Yes, they are.

2 Q. And did you interview Mr. Reed on May 18 regarding those
3 documents, sir?

4 A. Yes.

04:56

5 Q. And prior to that interview, did you advise him of his
6 rights?

7 MR. REED: Objection, Your Honor. You can't testify
8 for something that has not been offered or received into
9 evidence.

04:56

10 THE COURT: That would be ordinarily correct. I
11 think he's just laying a foundation, however. Overruled.

12 Q. (MR. WRIGHT CONTINUING) Did you advise him of his rights
13 again prior to that interview?

14 A. Mr. Reed, yes.

04:56

15 Q. Did Mr. Reed agree to talk to you?

16 A. Yes.

17 Q. And did you show Mr. Reed what's been marked as Exhibits
18 11 and 12?

19 A. A copy of them, yes.

04:57

20 Q. Did you ask Mr. Reed if he had authored those documents?

21 A. Yes.

22 Q. And what did he say?

23 A. He said he had written them.

24 Q. Did you ask Mr. Reed if he had filed those documents?

04:57

25 A. Yes.

1 Q. what did he say?

2 A. He said he filed them.

3 Q. That he had?

4 A. Yes.

04:57

5 Q. And, sir, can I ask you to take this highlighter? Let's
6 go to Exhibit 11 first. Can you highlight the docket number at
7 the top of the page, please?

8 A. (Drawing.)

04:57

9 Q. And is that also highlighted on the body part, the same
10 docket number?

11 A. Yes.

12 Q. And what is the caption on that pleading?

13 A. The caption, "Notice of Default of Copy Right and True
14 Bill."

04:57

15 Q. All right. And the name of the lawsuit is what?

16 A. *United States of America versus Michael Howard Reed.*

17 Q. And can you highlight "Michael Howard Reed"?

18 A. (Drawing.)

04:57

19 Q. Now, on that document on page 2, does Mr. Reed also list a
20 specific Financing Statement and Financing Statement number?

21 A. Yes.

22 Q. And where is that at?

23 A. Here (indicating).

24 Q. Middle of the page?

04:58

25 A. Yes, middle of the paragraph.

1 Q. Can you highlight that, please?

2 A. Yes.

3 Q. And can you highlight the two names where he signed it,
4 please?

04:58

5 A. (Drawing.)

6 Q. Now let's go to Exhibit 12. Can you again highlight the
7 court's number on the top part of the page?

8 A. (Drawing.)

04:58

9 Q. And can you highlight the court's number again where he
10 wrote it?

11 A. (Drawing.)

12 Q. And highlight his name again, "Michael Howard Reed."

13 A. (Drawing.)

14 Q. On page 2 does he mention a variety of names in there?

04:58

15 A. Yes.

16 Q. And is one of them Lynn C. Jordheim?

17 A. Yes.

18 Q. Can you highlight that?

19 A. (Drawing.)

04:58

20 Q. And in there he also mentioned Judge Hovland amongst the
21 many names?

22 A. Yes.

23 Q. Can you highlight that?

24 A. (Drawing.)

04:59

25 Q. And going to page 4, paragraph 2, does he mention the

1 \$2.4 million in there?

2 A. Yes.

3 Q. Can you highlight that, please?

4 A. (Drawing.)

04:59

5 Q. Page 5, is there something highlighted in there about

6 \$1 million in silver coinage?

7 A. Yes, it's mentioned.

8 Q. Can you highlight that?

9 A. (Drawing.)

04:59

10 Q. And on paragraph 6, is there a reference to the ten-digit

11 Financing Statement docket number?

12 A. Yes.

13 Q. Can you highlight that?

14 A. Yes.

04:59

15 Q. On the conclusion part of it, does he mention us being in

16 -- somebody being in default, the words "in default"?

17 A. Yes.

18 Q. Can you highlight that?

19 A. (Drawing.)

05:00

20 Q. And can you also highlight the part where it mentions the

21 ten-digit financing number?

22 A. Yes.

23 MR. WRIGHT: And if I haven't done so already, Your

24 Honor, we move to admit Exhibits 11 and 12 at this time.

05:00

25 THE COURT: Any objection?

1 MR. REED: I object.

2 THE COURT: On what grounds?

3 MR. REED: Rule 701 -- or, excuse me, Rule 404.

4 That's --

05:00

5 THE COURT: 404 or 403?

6 MR. REED: 403.

7 THE COURT: All right.

8 MR. REED: The documents that he has produced for
9 evidence is international documents.

05:00

10 THE COURT: International?

11 MR. REED: Yeah, international, international
12 documents that are only supposed to be for the UCC. They still
13 haven't proven jurisdiction for the UCC and the Uniform
14 Commercial Code.

05:01

15 THE COURT: Well, the UCC or the Uniform Commercial
16 Code has nothing to do with this action.

17 MR. REED: Well, it does because --

18 THE COURT: UCC has nothing to do with a criminal
19 prosecution, nor does a copyright law.

05:01

20 MR. REED: Under Title 27, Section 27(e) states it
21 does, so it does.

22 THE COURT: Overruled.

23 MR. REED: Commercial act.

05:01

24 THE COURT: Overruled. I find that there's no
25 violation of Rule 403 of the Federal Rules of Evidence. The

1 documents are more probative than prejudicial, and they are
2 relevant and they should be admitted, and Exhibits 11 and 12
3 are admitted.

4 MR. WRIGHT: May I publish using the Elmo?

05:01

5 THE COURT: Yes, you may.

6 Q. (MR. WRIGHT CONTINUING) And, Mr. Kellerman, you talked
7 earlier about the Financing Statement filed by Mr. Davis. Is
8 this again a copy of the Financing Statement that you asked
9 Mr. Davis about?

05:02

10 A. Yes.

11 Q. Mr. Davis had told you that he had filed that?

12 A. Yes.

13 Q. And top of that Financing Statement, is there that ten
14 digit number, 20101134?

05:02

15 A. Yes.

16 Q. And again, on that Financing Statement is there a
17 reference to the court case, 0076-DLH?

18 A. Yes.

05:02

19 Q. And again, that's the document filed by Mr. Davis that he
20 admitted to you that he filed --

21 A. Yes.

22 Q. -- with Washington, DC?

23 A. Yes.

05:03

24 Q. Now, when you interviewed Mr. Reed three months later --
25 on Exhibit Number 11, is that number, 00076, is that the court

1 case number of Mr. Reed's file?

2 A. Yes.

3 THE COURT: Now, by the court case number, you're
4 talking about the federal prosecution for --

05:03 5 MR. WRIGHT: The firearms charge.

6 THE COURT: -- for a fugitive in possession of a
7 firearm.

8 MR. WRIGHT: Yes, sir.

9 THE COURT: Okay.

05:03 10 MR. WRIGHT: The clerk's office number.

11 THE COURT: Right. That's 09-cr-076.

12 Q. (MR. WRIGHT CONTINUING) So, sir, that document showed up
13 in both documents filed by Mr. Reed and Mr. Davis, is that
14 correct?

05:03 15 A. Yes.

16 Q. And on page 2 of Exhibit 11, does Mr. Reed also cite the
17 document number from Mr. Davis' Financing Statement?

18 A. Yes.

19 Q. And this document was filed three months after the
20 Financing Statement, is that correct?

05:04

21 A. Yes.

22 Q. And Exhibit 12, Mr. Reed's Lodgement of Affidavit, that
23 also contained, as the Judge said, the clerk's office number in
24 the possession of firearm by a fugitive from justice case.

05:04 25 A. Yes.

1 Q. And does page 4 of Mr. Reed's handwritten, filed document
2 also reference 2.4 million USD?

3 A. Yes.

4 Q. The same as Mr. Davis references in the Financing
5 Statement filed against the Judge and U.S. attorney.

6 A. Yes.

7 Q. And on page 5, does Mr. Reed mention the \$1 million in
8 silver coinage?

9 A. Yes.

10 Q. The same as Mr. Davis mentions in the Financing Statement.

11 A. Yes.

12 Q. Except Mr. Davis called it sliver, but pretty much the
13 same, right?

14 A. Correct.

15 Q. All right. And again on page 6, does Mr. Reed again
16 reference the ten-digit filing number from Mr. Davis' filing
17 with the Washington, DC, Recorder of Deeds Office?

18 A. Yes.

19 MR. WRIGHT: Thank you. That's all I have, Your
20 Honor.

21 THE COURT: Cross-examination?

22 MR. REED: Yes. Within respect to earlier with --
23 when you asked the jury if somebody had a prior engagement
24 around 5 o'clock, I move this Court to convene for the evening
25 and pick this up tomorrow.

1 MR. WRIGHT: No objection, Your Honor.

2 THE COURT: All right. We can quit somewhat early
3 tonight. I'll just give the jury half pay today because they
4 didn't work a full day.

05:06

5 MR. REED: Now, now, now.

6 THE COURT: That wouldn't amount to anything anyway,
7 so, okay. So now if you go home tonight or wherever you go and
8 your spouse says where have you been or what's going on in
9 court, don't tell them anything. Just tell them you can tell
10 them all about it when the case is over.

05:06

11 So you can step down. I thank you. As I have told
12 other people, you can write a -- you can write a book if you
13 want to when the case is over with, but for now don't tell
14 anybody anything because it's just a recipe for trouble and
15 your spouse, or whatever, will start asking you questions, and
16 so we don't want any of that. Just go home and have a nice
17 evening. And again, don't go on the internet. Don't do any
18 research. Don't read any news reports concerning this case.
19 And, of course, do not form or express any opinion on the case
20 until it is finally submitted to you for your verdict. All
21 right. The jury is excused. We'll start promptly at
22 9 o'clock. All rise.

05:07

05:07

23 (Recessed from 5:08 p.m., Tuesday, October 12, 2010,
24 to 9:07 a.m., Wednesday, October 13, 2010.)

05:08

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